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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

12 CR 45 (RJS)

5 JERMAINE DORE and DWAYNE  
6 BARRETT,

7 Defendants.

8 -----x

9 March 14, 2013  
10 9:20 a.m.

11 Before:

12 HON. RICHARD J. SULLIVAN,

13 District Judge

14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the  
Southern District of New York

17 BY: JESSICA MASELLA

AMY LESTER

18 Assistant United States Attorneys

19 ALICE L. FONTIER

Attorney for Defendant Dore

20 -and-

LAW OFFICES OF YING STAFFORD

21 BY: YING STAFFORD

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23 BY: JAMES M. ROTH

-and-

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25 BY: KENNETH C. MURPHY

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1 (Trial resumed)

2 (In open court; jury not present)

3 THE COURT: I want to get back to a couple of issues  
4 we left open from yesterday. One is Ms. Fontier's motion to  
5 withdraw and/or for mistrial, and then the other is with  
6 respect to the exhibits that we were working with yesterday.  
7 So let's start with the second one first.

8 We've got a new exhibit, is that right?

9 MS. STAFFORD: Yes, your Honor.

10 THE COURT: I don't know if I have it.

11 MS. STAFFORD: No, you don't have it. Mr. Macedonio  
12 is actually in line downstairs.

13 THE COURT: The parties have talked about this? The  
14 government has seen it?

15 MS. LESTER: Yes, we have, your Honor.

16 THE COURT: Are there objections to this one?

17 MS. LESTER: We still have objections sort of based on  
18 clarity and whether this exhibit is actually going to aid the  
19 jury, but we can wait until we see -- and also I think perhaps  
20 foundation.

21 THE COURT: You have the revised one?

22 MS. LESTER: Yes.

23 THE COURT: That's what you're looking at?

24 MS. LESTER: Yes.

25 MS. STAFFORD: I have a color copy we can bring up on

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1 the computer, your Honor.

2 THE COURT: Let's do that. How many pages is it,  
3 first of all?

4 MS. STAFFORD: It's approximately 40 pages. It's  
5 broken into sections and divided into Defendants' Exhibits.

6 MS. FONTIER: Your Honor, if I may, basically what we  
7 are attempting to do is to ultimately introduce a CD that is a  
8 Power Point presentation of all of these slides, but what we've  
9 done for ease is divide the slides into categories, and in each  
10 category, the printouts are a separate exhibit so that the  
11 foundation can be laid. Say, for like the Google Earth images,  
12 the foundation will be laid for those. Those printouts will be  
13 admitted, hopefully.

14 The second category would be like a Google Map. The  
15 foundation will be laid for those. Those will be admitted as a  
16 group, those printouts, and then the foundation will be laid  
17 for the CD which contains the Power Point presentation that  
18 includes all of Defendants' Exhibits, whatever they are, C, D,  
19 E, and then hopefully admit the Power Point presentation and  
20 display for the jury the Power Point presentation with  
21 questions from the witness that will explain each of the slides  
22 as we go through them.

23 THE COURT: All that's fine. I guess the devil is in  
24 the details. The issue is whether or not the proper foundation  
25 can be laid or whether there's something else objectionable

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1 about it. If there are no objections, my general approach,  
2 unless there's something truly glaring or something that makes  
3 it clearly inadmissible, if the parties agree that it's coming  
4 in, then I don't think we should belabor it.

5 Government, your objection is to what, you just don't  
6 think it's helpful?

7 MS. LESTER: We certainly don't think these Google Map  
8 images are helpful, your Honor. We think that they're  
9 confusing. It's not clear exactly what they're showing.  
10 There's no time period listed.

11 THE COURT: Yes. There is. At least in this picture  
12 there is.

13 MS. LESTER: It says 10/29/11 and other times.

14 THE COURT: So what are these other times?

15 MS. STAFFORD: The other times, your Honor, are the  
16 phone calls that are emanating from the tower, and those do  
17 have times.

18 THE COURT: So this is 10/29? Or is it November 6 or  
19 December 15? I don't understand.

20 MS. STAFFORD: This is a phone call that was routed to  
21 that particular cell tower, and when you click on that cell  
22 tower, because the program works sort of as a database, it  
23 pulls up all the phone calls which are imported to it, which  
24 are the numbers 347-883-8414.

25 THE COURT: I get that. Over what period of time?

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1 MS. STAFFORD: It's the duration of the phone records.

2 THE COURT: Which is what?

3 MS. STAFFORD: Which is approximately July 2011 to  
4 approximately February 2012.

5 THE COURT: All right. So why not just say that?

6 MS. STAFFORD: I'd be happy to say that. I mean, I  
7 had planned on eliciting that, within the foundation, the  
8 duration of the records, period that they cover.

9 THE COURT: I think it's a fair point that the fact  
10 that this phone happened to be in the vicinity of a robbery on  
11 a particular day is not as impressive when you consider that  
12 that phone was bouncing off of towers in that area every day  
13 for months. So I think that's a point that's fair. It can be  
14 made. I think it can be made graphically. I'm not sure that  
15 this chart makes that so apparent. There will be testimony, so  
16 it's not coming in in a vacuum.

17 MS. LESTER: Your Honor, another problem with this is  
18 that it has three phone numbers here, but there's no  
19 designation, at least that I can tell, in the visual as to  
20 which calls are for which phone number.

21 MS. STAFFORD: Your Honor, to do that would make it  
22 even more, I don't know how visually we could have done that.

23 THE COURT: You could have done a separate slide for  
24 each phone number.

25 MS. STAFFORD: It literally comes from the phone

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1 records themselves, Government Exhibit 2020.

2 THE COURT: You could have separated them out by phone  
3 number. The government exhibits break down data for each phone  
4 number. So I don't think you had to have done it, but you  
5 certainly could have done it.

6 MS. STAFFORD: Yes, you're absolutely right. We could  
7 have done it.

8 THE COURT: I think these are points that can be made  
9 on cross. I'm inclined to allow it. It's not the way I,  
10 frankly, would have done it, but that's not the standard, lucky  
11 for all of you. I say that with a smile, of course.

12 So this one, it seems to me, I think, could be  
13 admissible if there's proper foundation. It still doesn't  
14 indicate what exhibits he relied on, but I assume he will  
15 testify about that better than he did yesterday. He can't just  
16 say I got a bunch of documents and inputted it all here and  
17 that's accurate. That's not sufficient.

18 MS. STAFFORD: No. I don't plan to do that, your  
19 Honor.

20 THE COURT: Are there other specific slides or  
21 categories of slides that the government objects to?

22 MS. LESTER: No, your Honor. We'll wait until we hear  
23 what the foundation is for the rest of them.

24 THE COURT: If there are foundation issues, then we'll  
25 deal with that. But if there are more fundamental objections,

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1 I'd like to deal with those now rather than at a side bar.

2 MS. FONTIER: If we can go to the next set, your  
3 Honor, these are by far the most complex. The remaining are  
4 Google Maps, essentially.

5 THE COURT: I don't know if they're complex.

6 MS. FONTIER: And an excerpt of the government's  
7 exhibit.

8 THE COURT: The jury's all here? Is that what the  
9 knocking was? Are we still waiting?

10 MS. STAFFORD: He's got to be downstairs.

11 MR. ROTH: I see that your phone is making calls. I  
12 think they're holding him there.

13 THE COURT: Did the government put a hold on this guy?

14 MS. STAFFORD: They're making him wait downstairs,  
15 yes. Should I go downstairs?

16 THE COURT: No. Aaron, can you go down and tell  
17 them -- what entrance is he at?

18 MS. STAFFORD: Pearl Street.

19 THE COURT: Aaron, go down. Just tell the jury that  
20 we're, don't give them a reason. Just tell them we'll be with  
21 them shortly. Okay? They should have another cup of coffee.

22 MS. LESTER: Your Honor, we don't have any other  
23 objections other than waiting for the foundation to be laid.  
24 But I did speak to defense counsel last night about the fact  
25 that we may well call Agent Magnuson back to the stand.

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1 THE COURT: Today?

2 MS. LESTER: In rebuttal, yes. He's here and  
3 available. We gave them notice. I just wanted to let the  
4 Court know.

5 THE COURT: I don't know if you need to give them  
6 notice, but it's good that you did. That's fine.

7 Just get Mr. Macedonio up here. That's who we're  
8 waiting for?

9 MS. STAFFORD: Yes, your Honor.

10 THE COURT: While we're waiting for him, let's talk  
11 about two issues. We have a jury issue that came up.

12 I am prepared to rule on Ms. Fontier's motion. I've  
13 thought about this a great deal. I'm going to deny the motion.  
14 I guess as an initial matter I would note that I think this is  
15 a pretty late motion. I don't think there's any dispute that  
16 defendants knew that Ms. Brown was subpoenaed weeks ago but  
17 didn't make this motion then. The 3500 material on Ms. Brown  
18 was handed over on the Monday before jury selection, and the  
19 motion wasn't made then. We then opened. The government  
20 called Ms. Brown. There was no motion made after her direct.  
21 She then was crossed at length. No motion was made at that  
22 point. It wasn't really until days later, Monday of this week,  
23 that the motion was made.

24 Most of what Ms. Fontier wants to impeach are  
25 statements that were brought out on cross, and so it's not



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1 impeaching things that were really said on direct. So I don't  
2 know that that alone is a reason to deny the motion. I don't  
3 think it probably is, but I do think it's important to note  
4 that for context.

5 The real reason, I think, is the issues about which  
6 Ms. Fontier wishes to testify are really collateral. I think  
7 they're impeaching the credibility of Ms. Brown generally. I  
8 think it would be a different analysis if the defense theory  
9 were that Ms. Brown's prior statements about an alibi were the  
10 truth and her recent testimony, which is a recantation of that,  
11 is false, and you've got two statements of the witness, one of  
12 which the government is saying is true, one of which the  
13 defense is saying is true, then I think the fact of  
14 conversations between Ms. Fontier and Ms. Brown would not be  
15 collateral and I think would be appropriate. But that's not a  
16 defense. The defense is not arguing that the alibi that was  
17 proffered by Ms. Brown to Ms. Fontier was, in fact, or is, in  
18 fact, valid, nor can they, I think, because the documents that  
19 were provided by Ms. Brown reflect an alibi that's 12 hours  
20 after the murder. And so the argument really is that she was  
21 prepared to lie then and so she's lying now.

22 I think that's an argument that can be made. I just  
23 don't think it requires the testimony of Ms. Fontier to make  
24 it. I mean, there's a lot of other material to argue about her  
25 lack of credibility. She testified falsely under oath at a

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1 prior proceeding, so there's ample material there to challenge  
2 the credibility of Ms. Brown. But I think really what is being  
3 proffered as the testimony of Ms. Fontier now, what would be  
4 her testimony, is designed really just to impeach her general  
5 credibility, and so that is, I think, precisely the sort of  
6 minitrial that the Federal Rules of Evidence caution against,  
7 and so we're not going to get into that.

8 I see Mr. Macedonio is here. I just wanted to let you  
9 know the ruling so you're not wondering and so it's very clear  
10 as to where we're going today.

11 We're going to hear from Mr. Macedonio, have some  
12 direct, have some cross. And then no other witnesses from the  
13 defense, is that correct?

14 MS. FONTIER: No. We have worked out a stipulation,  
15 so I would just be reading that into the record.

16 THE COURT: That's the stipulation that was handed up  
17 to me?

18 MS. FONTIER: Yes. I have the original, signed.

19 THE COURT: Okay.

20 MS. FONTIER: Your Honor, we did work out a  
21 stipulation for the admission of the underlying call detail  
22 records that the government had not introduced, so I think our  
23 intention is, it's fine obviously that Mr. Macedonio be on, but  
24 to read that stipulation in now so his testimony about that  
25 number is based on --

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1 THE COURT: That's perfect. That's fine.

2 Ms. Schuster, who is juror No. 12, you recall, had  
3 indicated that her mother was undergoing cancer treatment, I  
4 think. So her mother has surgery next Thursday. I don't know  
5 if that means she needs to leave earlier or she has to leave  
6 Thursday. But that's certainly cutting into deliberations. If  
7 she needs to leave Wednesday for Thursday surgery -- I think  
8 the jury's probably not going to get this case for  
9 deliberations until the end of the day Monday -- so that's  
10 cutting it close. That's a risk. We don't have to decide that  
11 now, but I do think we'll have to decide what we want to do  
12 before I excuse the jurors for the day. I guess I could have  
13 her come back Monday and we'll decide Monday, but that's an  
14 issue.

15 Remember, we also have an issue with respect to juror  
16 No. 2, Ms. Joachim, who has a trip planned. It's all prepaid,  
17 it's not refundable, and it's her business also. And she's  
18 leaving Thursday night. So that's another juror with whom we  
19 have an issue. We have two alternates left, so think about it.  
20 We'll talk more once we finish with the evidence. Okay?

21 MS. FONTIER: Certainly. I know we'll talk more, your  
22 Honor, but I know my position as to Ms. Schuster. I know that  
23 she also had mentioned that her father does have Alzheimer's  
24 and is not really in a position to provide care and I know that  
25 presurgery preparations can be very difficult, so I would have

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1 no objection to excusing her at the end of today if that's what  
2 the Court and the government decide.

3 THE COURT: All right. We'll talk about that more.  
4 Let's see if we're ready on the evidence and then we'll bring  
5 in the jury.

6 (Continued on next page)

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1 (In open court; jury present)

2 THE COURT: Have a seat. Thank you again for being on  
3 time. You guys have been terrific and it's always gratifying  
4 for me to hear a knock on the door even before 9:30, which  
5 means you're all here ready to go. It pains me then to not be  
6 able to get you in right away because I worry you will lose  
7 faith in me. I'm only half joking about that. I want to make  
8 sure your time is used efficiently because your time is  
9 valuable and you're giving your time to be able to serve. At  
10 the same time, I have the consolation of knowing that we were  
11 working to resolve issues in order to make the thing go faster,  
12 so it wasn't wasted time.

13 We're going to resume the examination of  
14 Mr. Macedonio. You can have a seat for now, Mr. Macedonio.

15 JAMES MACEDONIO, resumed.

16 THE COURT: Before we do that, however, we have had a  
17 departure. Juror No. 3, Mr. Soto-Valdez, has been excused.

18 Mr. Mills, you will now be juror No. 3. So you can  
19 leave the back row and ascend to the seat up front. This again  
20 hammers home the point I made to you earlier, which is that  
21 alternates are often called to serve, and I know our alternates  
22 have been paying as much attention as our jurors. There has  
23 been no distinction, with that understanding in mind. So,  
24 thank you.

25 With that, we'll now proceed.

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1 MS. STAFFORD: I just would like to read a  
2 stipulation, and it reads: "The parties in United States of  
3 America v. Jermaine Dore and Dwayne Barrett hereby stipulate  
4 and agree to the following:

5 "That Defendants' Exhibit B, the call detail records  
6 and the cell site location records for telephone number  
7 917-200-1367 are admissible as evidence in this case as  
8 business records." And it is also signed by the parties and  
9 dated March 14, 2013.

10 THE COURT: All right. So Defendants' Exhibit B is  
11 received by virtue of that stipulation. Are we marking the  
12 stipulation as an exhibit?

13 MS. STAFFORD: Yes. The stipulation is marked as B1.  
14 The actual records are marked as Defendants' Exhibit B, and I  
15 would like to move that into evidence, your Honor.

16 THE COURT: Yes, Defendants' Exhibits B and B1 are  
17 received.

18 (Defendant's Exhibits B and B1 received in evidence)

19 THE COURT: As I told you, folks, I'll give you a list  
20 of all the exhibits when you are deliberating. And I also told  
21 you a stipulation is an agreement between the parties and it's  
22 an agreement to facts sometimes, and you should accept those  
23 facts as true.

24 You may proceed.

25 MS. STAFFORD: Thank you.

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1 DIRECT EXAMINATION (cont'd)

2 BY MS. STAFFORD:

3 Q. Good morning, Mr. Macedonio.

4 A. Good morning.

5 Q. I'm going to hand you, if I may approach, your Honor --

6 THE COURT: You may.

7 BY MS. STAFFORD:

8 Q. -- Defendants' Exhibit C1. If you could, just take a look  
9 at it, please.

10 A. Sure.

11 Q. Do you recognize these documents?

12 A. Yes, I do.

13 Q. Did you create these documents? Yes.

14 A. I created these slides in the Power Point presentation.

15 Q. Who created?

16 A. The pictures in the slides were created by the cell site  
17 expert in this case in Google Earth.

18 Q. Do you know what is represented in those documents?

19 A. I do.

20 Q. And are you familiar with Google Earth?

21 A. Sorry? Google Earth?

22 Q. Yes.

23 A. Yes, I am.

24 Q. And did you verify the records, the information contained  
25 in Google Earth that was created by the cell site expert with

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Macedonio - direct

1 any exhibits that were provided to you?

2 A. I did.

3 Q. And what were those exhibits?

4 A. I compared them to Exhibits 2010 and 2020, which are cell  
5 site information and call detail records for the numbers listed  
6 347-883-8414, 917-200-1367, 704-345-3805, and a few others.

7 THE COURT: Wait. And a few others? What does that  
8 mean?

9 THE WITNESS: Just numbers that I don't remember off  
10 the top of my head.

11 THE COURT: You took the numbers from Government  
12 Exhibits 2010 and 2020?

13 THE WITNESS: Yes.

14 THE COURT: And with those numbers you did what?

15 THE WITNESS: Well, with those -- the numbers are just  
16 the numbers and the spread sheets that follow those numbers  
17 contain call detail records and cell site information. And  
18 with that information, I verified the work put into Google  
19 Earth which is basically just you take those spread sheets and  
20 you put them into a program and it creates a map of all the  
21 latitudes and longitudes in the spread sheets.

22 THE COURT: You took the data from 2010 and 2020 and  
23 you inputted it into a program maintained by Google Earth?

24 THE WITNESS: I didn't put it. The previous expert  
25 did. I just verified his work was accurate.



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Macedonio - direct

1 THE COURT: How did you do that?

2 THE WITNESS: I looked at the latitudes and longitudes  
3 provided in the program and i checked them against a separate  
4 program, Google Maps, and found the cell towers located in the  
5 same places, which is what this map indicates, where cell  
6 towers are.

7 THE COURT: Next question.

8 BY MS. STAFFORD:

9 Q. Did you also refer to exhibits, the actual records, to  
10 verify the Google Earth program?

11 A. I did.

12 Q. Did you confirm that that information was accurate?

13 A. I did.

14 Q. And how did you create the printout that is in front of  
15 you?

16 A. We took snapshots of the Google Earth program, which is  
17 like an interactive program, so you would have to take a screen  
18 shot of it because it's, it has pretty much all the data loaded  
19 into it for GPS points all over the world for latitude and  
20 longitudes. And we put markers in where cell towers are, so we  
21 just took screen shots of where the cell towers in question  
22 were and put them in these slides.

23 Q. How about, where did you get the information from the phone  
24 calls that are represented on the map at Google Earth?

25 A. From Government Exhibits 2020 and 2010.

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Macedonio - direct

1 Q. Are those printouts that are in front of you a fair and  
2 accurate depiction of what you captured of the images from  
3 Google Earth?

4 A. Yes.

5 Q. Can you take a look at the next page?

6 THE COURT: Page two of C1?

7 MS. STAFFORD: Page two of C1.

8 A. Mm-hmm.

9 Q. Was that created in the same way as page one of C1?

10 A. Yes.

11 Q. Is it a fair and accurate depiction?

12 A. Yes.

13 Q. And could you please look at the next page, Mr. Macedonio.  
14 And that's page three of C1 --

15 A. Yes.

16 Q. -- is that correct?

17 And is that also a fair and accurate depiction of the image  
18 that you created from Google Earth?

19 A. Yes.

20 Q. And then if you could look at page four of C1 --

21 A. I have --

22 THE COURT: I don't have a page four.

23 A. -- three pages.

24 MS. STAFFORD: I'm sorry. It just goes to page three.

25 Q. Do each of those images correspond to a government exhibit

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1 that you looked at?

2 A. Yes, they do.

3 Q. And those exhibits, you mentioned them before, but if you  
4 could just mention them again?

5 A. 2010 and 2020.

6 Q. And is there a Defendants' Exhibit that you also looked at?

7 A. Defendants' Exhibit -- this would be C1 right here.

8 Q. Was there a Defendants' Exhibit that you also looked at  
9 that contained call detail records?

10 A. I believe those are just the government exhibits. No?

11 Q. Do you recall the number? Do you recall the numbers that  
12 are inputted in that program?

13 A. Yes, I remember them from inputting them into my own  
14 slides.

15 Q. Do you recall a 917 number?

16 A. I recall a 917-200 number. The last four are usually an  
17 issue for me to remember. And then I remember there were two  
18 704 numbers and a few 347s.

19 Q. Were you provided the call detail records for the 917  
20 number?

21 A. Yes.

22 Q. And those correspond with the information that's in Google  
23 Earth?

24 A. Yes.

25 Q. And that information was accurate and correct, according to

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Macedonio - direct

1 the call detail records that you looked at?

2 A. Yes.

3 MS. STAFFORD: Your Honor, at this time, I ask to  
4 admit Defendants' Exhibit C.

5 THE COURT: Any objection?

6 MS. LESTER: Yes, your Honor. Could I just voir dire,  
7 a few questions?

8 THE COURT: The only ones I will allow are with  
9 respect to time frame. Is that where you're going?

10 MS. LESTER: No, your Honor. With respect to the  
11 verification that he did of the fact that this representation  
12 is accurate and depicts what's actually in the call detail  
13 records. I believe he said that he verified the tower location  
14 but that he didn't verify each individual call. In other  
15 words --

16 THE COURT: Let's ask that question.

17 There are three photos in this exhibits, correct?

18 THE WITNESS: Yes, sure.

19 THE COURT: Each depicts a particular tower, is that  
20 right?

21 THE WITNESS: Yes. The center of the image is the  
22 tower.

23 THE COURT: And there are sort of lines emanating from  
24 that tower, correct?

25 THE WITNESS: Yeah, and they come to different points

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Macedonio - direct

1 which represent not locations but different phone calls that  
2 came off that tower at different times.

3 THE COURT: So what did you do to verify that those  
4 calls hit that tower?

5 THE WITNESS: See, this information, I didn't put this  
6 in. So I didn't really do a lot to verify the actual  
7 individual calls because there are a lot of, a lot of different  
8 calls on here, especially page three. So I just verified the  
9 location of the towers.

10 THE COURT: All right. And that's your objection?

11 MS. LESTER: Yes, your Honor.

12 MS. STAFFORD: May I ask another question, your Honor.

13 THE COURT: Yes.

14 BY MS. STAFFORD:

15 Q. Mr. Macedonio, when you received the Google Earth program  
16 from the prior person who had imported the information on the  
17 phone calls, did you also verify from the call detail records  
18 that you referred to as Government Exhibits, and I won't say it  
19 again.

20 THE COURT: 2010 and 2020.

21 MS. STAFFORD: 2010 and 2020.

22 Q. Did you verify that that information was inputted  
23 accurately into the actual program?

24 A. I verified the GPS locations that were listed in each of  
25 the government exhibits and the Google Earth program and I

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Macedonio - direct

1 found them to be the same. But, I mean, the calls actually  
2 came off the same spread sheets as the GPS location, so --

3 Q. Correct.

4 A. -- as far as checking each call, I didn't do that. But  
5 checking the source of the information, I did check that.

6 Q. So you went through the call detail records and you looked  
7 at the phone numbers on the Google Earth program --

8 A. Mm-hmm.

9 Q. -- to verify the phone records?

10 Did you, in fact, verify the phone records match the phone  
11 calls that are listed in the program?

12 A. The phone numbers, yes. And the locations of the towers,  
13 yes, but not each individual phone call. What we did is I used  
14 just, I selected phone calls here to check against the spread  
15 sheets as for GPS locations of those towers.

16 THE COURT: I'm not sure I understand. So there's a  
17 bunch of phone numbers on here.

18 THE WITNESS: Right. Three phone numbers on this.

19 THE COURT: Listed at the top. And then there's dates  
20 and times listed in the exhibit.

21 THE WITNESS: Right.

22 THE COURT: Did you do anything to check whether the  
23 dates and times correspond with what's on the government  
24 exhibit?

25 THE WITNESS: Not all of them. Just the ones that I

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Macedonio - direct

1 used.

2 THE COURT: I'm not sure I understand.

3 THE WITNESS: Each cell --

4 MS. STAFFORD: Let me try and clarify.

5 THE WITNESS: Yeah.

6 BY MS. STAFFORD:

7 Q. Prior to creating any presentation here before your  
8 testimony today, when you received the Google Earth program  
9 that had been previously imported with several telephone  
10 numbers, were you provided call detail records from Government  
11 Exhibit 2020 and Government Exhibit 2010?

12 A. Yes.

13 Q. And did you, in fact, correspond those phone records with  
14 the phone calls that were inputted into the Google Earth  
15 program to ensure that they were accurate? Just the phone  
16 call, not the towers.

17 A. These individual phone calls on the paper right here?

18 Q. No. The entire, the Google program that you originally  
19 received prior to any preparation of the slides.

20 A. I verified the tower locations but not each individual  
21 phone call, like I said before.

22 Q. Are you referring to each individual phone call that's in  
23 the image?

24 A. In the image.

25 Q. Okay. But the underlying database that was looked at by

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1 you --

2 A. Yes.

3 Q. -- that contains several phone calls?

4 A. Right.

5 Q. Were you asked to look at certain phone calls and verify  
6 that those phone calls corresponded with the actual records  
7 that were provided to you?

8 A. Yes.

9 Q. Okay. So then you did, in fact, verify that the  
10 information inputted into the program, although -- inputted  
11 into the actual Google Earth programs --

12 A. Right.

13 Q. -- was accurate in corresponding with Government Exhibits  
14 2020 and 2010?

15 A. Yes.

16 THE COURT: All right. That's my question.

17 THE WITNESS: Sorry.

18 THE COURT: Did you take the data from 2020 and 2010,  
19 which is a list of phone calls on particular dates and  
20 particular times, and confirm that that data was inputted into  
21 the software that is the Google Earth program?

22 THE WITNESS: Yes.

23 THE COURT: You did that?

24 THE WITNESS: Yes.

25 THE COURT: Okay. And after you did that, then what



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1 did you do next?

2 THE WITNESS: As far as what, your Honor?

3 THE COURT: To prepare this document.

4 THE WITNESS: To prepare this document? Well, this  
5 document was prepared by a previous, the document pictured in  
6 this document was prepared by a previous expert who basically  
7 just put all --

8 THE COURT: Is this document the product of what you  
9 just described, that the data from 2020 and 2010 was inputted  
10 into the Google Earth software program?

11 THE WITNESS: Yes, but I didn't input it into that  
12 program.

13 THE COURT: But you verified that what was inputted  
14 into the program corresponded with what's on 2020 and 2010?

15 THE WITNESS: Yes.

16 THE COURT: All right. And so after that, the Google  
17 Earth program spit something out, right?

18 THE WITNESS: It spits out images that look like this  
19 on the paper.

20 THE COURT: What's the difference between what the  
21 Google Earth program spit out and Defendants' Exhibit C1? What  
22 did you do to it?

23 THE WITNESS: Well, when you open Google Earth it  
24 shows a whole map of the whole world, and you can zoom in on  
25 different locations that have been plotted, and the center of

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1 this picture is the location that's been plotted, and you can  
2 just zoom on it. And when you click on it, you can see which  
3 phone calls come off this tower during the range of time that  
4 was inputted into the data.

5 THE COURT: And you confirmed that this is, in fact,  
6 the tower that is listed on here, the tower located at 2705  
7 Colden Avenue?

8 THE WITNESS: Yes.

9 THE COURT: For example, on page one. All right.

10 Any objection to this exhibit?

11 MS. LESTER: Your Honor, I think it's still not clear  
12 that this witness is the proper witness because he doesn't know  
13 how the program, at least I haven't heard whether he knows how  
14 the Google Earth program works.

15 THE COURT: We had testimony about that yesterday.  
16 You can ask the question. Go ahead.

17 VOIR DIRE EXAMINATION

18 BY MS. LESTER:

19 Q. Have you used Google Earth yourself?

20 A. Yes.

21 Q. Do you understand how it works?

22 A. I have a basic understanding of it, yeah.

23 Q. How does it work?

24 A. Well, pretty much every point on the earth has a GPS  
25 location as far as latitude and longitude, and Google Earth has

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1 the whole world mapped out. And when you input latitude and  
2 longitude, it will bring you to that point.

3 Q. How do you use Google Earth to create a record such as  
4 we're looking at in Defendants' Exhibit C1?

5 A. Well, as far as this exhibit, you would have to get the  
6 latitude and longitude of the tower that's pictured and then  
7 you input it into Google Earth and put a place marker there,  
8 and that will show you where the tower is.

9 Q. How do you get the other information that's on the exhibit?

10 A. The other information also comes from the call detail  
11 records and cell site information because each of these phone  
12 calls that comes off of the cell tower has information as to  
13 the location area code and the cell tower that was used to make  
14 the phone call or text message, or whatever it is. And if the  
15 records are accurate, then you can input it and see which cell  
16 tower it came off of.

17 Q. But how do the call detail records get put into Google  
18 Earth? Do you understand that process?

19 A. Yes. The dates and times on the call detail records. And  
20 there's also a GPS location which is inputted into the GPS  
21 program.

22 Q. So if I'm understanding you correctly, you put in the GPS  
23 location for the particular cell tower?

24 A. Yes.

25 (Continued on next page)

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1 BY MS. LESTER:

2 Q. And then you put in additional GPS locations based on each  
3 call detail record entry?

4 A. Well, these -- the ones pictured in Defendant's Exhibit C,  
5 they're all going to be the same GPS locations because they're  
6 coming off of the same cell tower.

7 THE COURT: And you know that from the government's  
8 exhibits that you examined?

9 THE WITNESS: Yes. It is all listed on the cell site  
10 information and the call detail records.

11 MS. LESTER: Have you ever used Google Earth to create  
12 a document such as this?

13 THE WITNESS: Not to create one. This is the first  
14 time that I have used it.

15 MS. LESTER: All right, your Honor. We don't object.

16 THE COURT: Yes, I think that's sufficient.

17 Defendant's Exhibit C-1, which is three pages -- three  
18 specific maps, is admitted. I did have one caveat though:  
19 There is a header at the top that talks about certain dates and  
20 it listed one particular date and then says other times. Can  
21 you be more specific as to what the dates are that are covered  
22 by these individual photos?

23 THE WITNESS: You're asking me, your Honor?

24 THE COURT: Yes.

25 THE WITNESS: The dates on the photos correspond with

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Macedonio - direct

1 phone calls that were made off of this cell tower and I guess  
2 the date range is -- I'm not sure of whatever date range is in  
3 the cell tower information and call detail records in  
4 government 2010 and 2020.

5 THE COURT: Do you have a sense as to how long a  
6 period that is? Days? Weeks? Months?

7 THE WITNESS: Years.

8 THE COURT: Years.

9 THE WITNESS: Yes. It starts in 2011 and -- at least  
10 a year. I remember seeing 2012 in there as well.

11 THE COURT: All right. So that's received.

12 (Defendant's Exhibit C-1 received in evidence)

13 THE COURT: Are you going to show it to the jury?

14 MS. STAFFORD: I will show it to the jury now. Thank  
15 you, your Honor.

16 Sorry, your Honor, I am going to move on and try to  
17 build a foundation for the rest of the PowerPoint and do that  
18 at the end.

19 THE COURT: That's fine.

20 MS. STAFFORD: May I approach?

21 THE COURT: You don't have to ask. That's fine.

22 BY MS. STAFFORD:

23 Q. Showing you Defendant's Exhibit marked D-1 for  
24 identification, if you can look at that? Take your time.

25 THE COURT: Do you want him to study every page?

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Macedonio - direct

1 THE WITNESS: I'm just making sure everything is here.  
2 I recognize the document.

3 THE COURT: It is a 37-page document, right? That's  
4 what you have?

5 THE WITNESS: Yes.

6 BY MS. STAFFORD:

7 Q. Did you create these documents, Mr. Macedonio?

8 A. I did.

9 Q. And how did you create these documents?

10 A. I'm sorry, let me get to the right page.

11 So, to create these documents I had cell site  
12 information for numbers 704-345-3805, 704-356-5031,  
13 917-200-1367.

14 THE COURT: Where do you get that?

15 THE WITNESS: These are from Government Exhibit 2010.

16 THE COURT: All from 2010?

17 THE WITNESS: Yes.

18 BY MS. STAFFORD:

19 Q. Is there another exhibit that you got those numbers from?

20 A. 2020; but I believe these particular numbers are from 2010.

21 Q. Did you use a particular program to create that document?

22 A. I used two programs; I used Microsoft PowerPoint to create  
23 the actual document I'm looking at, and I used Google Maps,  
24 which is similar to Google Earth, to create the maps in the  
25 program -- in the presentation. Sorry.

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Macedonio - direct

1 Q. Is Google Maps a publicly available program?

2 A. It is.

3 Q. Can you just explain what Google Maps does?

4 A. It does something very similar to what Google Earth does;

5 you can plug in GPS data as far as latitude and longitude and

6 put in addresses on Google Maps to find directions from one

7 place to another pretty much is what most people use it for.

8 And I took information that I got from the cell site data for

9 these numbers and there is a key provided with that that tells

10 you how to locate exactly where that cell tower is at, its

11 address and different cell towers on different maps. I input

12 those addresses into Google Maps -- I mean -- yes, Google Maps.

13 Q. Where did you get that information? You may have mentioned

14 it before but you can say it again?

15 A. Government Exhibit 2010.

16 Q. Did you compare Government Exhibit 2010 with the maps that

17 you created in this exhibit?

18 A. Yes, I did.

19 Q. And are each of the maps in Defendant's Exhibit D a fair

20 and accurate printout of the map that you created on Google

21 Maps?

22 A. Yes.

23 Q. I'm sorry. How did you create the printout that you have

24 in front of you?

25 THE COURT: The maps?

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Macedonio - direct

1 Q. The maps, yes.

2 A. The maps? Well, I inputted the address locations for  
3 different cell towers and then I clicked get directions which  
4 is just a way that I know how to show this map from A to B and  
5 I took a screen shot, printed a PDF of the image that came up  
6 and I put it into Microsoft PowerPoint.

7 Q. The documents that you looked at, are those fair and  
8 accurate depictions of the documents that you created?

9 A. Yes.

10 Q. Did you also verify -- I apologize.

11 I think at this time, your Honor -- there are certain  
12 phone numbers on there, if you could turn to page 2 and if you  
13 could take a look at that page, please?

14 A. Sure.

15 Q. And how did you create that particular document?

16 A. For this particular document I looked at the cell site  
17 information for phone number 704-345-3805. I looked at  
18 particular phone calls. I got their LACs and each phone call  
19 has first LAC, second LAC -- and an LAC is location area code  
20 which is a grouping of cell towers -- and then I also got that  
21 phone call's first cell I.D. and second cell I.D. which  
22 indicates the cell towers used because each phone call has two  
23 cell I.D.s or cell towers it uses in the spreadsheet.

24 Q. And when you say the spreadsheet you're referring to --

25 A. Government Exhibit 2010.



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Macedonio - direct

1 Q. And the information that you have here, is this accurate  
2 information that you verified with Government Exhibit 210.

3 THE COURT: You are talking about 2010 or 210?

4 MS. STAFFORD: There is Government Exhibit 2010 or  
5 2020.

6 THE COURT: When you say 210 you mean 2010.

7 MS. STAFFORD: At this time, your Honor, I move to  
8 admit Defendant's Exhibit D.

9 THE COURT: Any objection?

10 MS. STAFFORD: Your Honor, just to the foundation for  
11 phone number 917-200-1367; there aren't any call detail records  
12 for that number in Government Exhibit 2010.

13 THE COURT: I think that's a fair objection, so.

14 BY MS. STAFFORD:

15 Q. Did you review the phone number 917-200-1367 which is on  
16 page 36?

17 A. Yes.

18 Q. And, what records were you provided for 917-200-1367?

19 A. Cell site records.

20 Q. And can you be more specific?

21 A. As far as what's in the cell site records?

22 Q. Were they call detail records?

23 A. I believe they're called call detail records and cell site  
24 records for each number.

25 MS. STAFFORD: Your Honor, is there some objection?

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Macedonio - direct

1 Or I can bring them up on the screen to verify that he  
2 recognizes it.

3 THE COURT: What are you going to bring up on the  
4 screen?

5 MS. STAFFORD: Defendant's Exhibit B which is a 917  
6 call.

7 THE COURT: Just search him and see if it refreshes  
8 his recollection if that exhibit includes data from that  
9 exhibit.

10 MS. STAFFORD: Your Honor, we only have these in CD  
11 form because they're several hundred pages long, just as the  
12 government only has theirs in CD form.

13 I can put the computer in front of him and see --

14 THE COURT: It is in evidence so you can show it on  
15 the screen.

16 BY MS. STAFFORD:

17 Q. Oh sure. Defendant's Exhibit B.

18 Ms. Brady, can we click on the first file, please?

19 Mr. Macedonio, do you recognize that file?

20 A. Yes.

21 Q. What is it?

22 A. These are the call detail records for 917-200-1367, and I  
23 think the confusion is it is not labeled that, it is labeled  
24 CDR, it is abbreviated up there.

25 Q. Why do you say that? What is the confusion?

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Macedonio - direct

1 A. I think the government had said there were no call detail  
2 records but it is just --

3 THE COURT: No, no. The issue is this is not 2010 or  
4 2020, is it?

5 THE WITNESS: I don't have the actual exhibit number  
6 in front of me.

7 THE COURT: So, you utilized certain records like this  
8 one to prepare some of the charts that are in Defendant's  
9 Exhibit D, right?

10 THE WITNESS: Similar to this, yes. There is also  
11 cell site records which is a different file.

12 BY MS. STAFFORD:

13 Q. We will get to that one. Do you actually recognize this  
14 file?

15 A. Yes.

16 THE COURT: So you used this file in preparing --

17 THE WITNESS: Not this particular file, but one for  
18 this phone number, the cell site there is two different files,  
19 call detail records and cell site records.

20 THE COURT: So you didn't use this document?

21 THE WITNESS: Not this document.

22 THE COURT: Okay, so.

23 BY MS. STAFFORD:

24 Q. If we can go to the next file?

25 Now, can you explain why this file is different from

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Macedonio - direct

1 the other file I just showed you?

2 A. Is this the full screen view of this? I don't think that  
3 it is.

4 Q. It can probably be moved over a lit bit.

5 A. This is different because there is more information on  
6 here. If you go all the way to the left, first cell I.D. and  
7 last cell I.D. are the cell I.D. numbers that I was talking  
8 about earlier that indicate cell towers. So, if you look first  
9 cell I.D. for phone call 7 is the first one that has it, the  
10 first cell I.D. is 23152, and the second or the last cell I.D.  
11 is also 23152.

12 THE COURT: Okay, but the issue is did you use this  
13 document --

14 THE WITNESS: Yes --

15 THE COURT: -- to prepare what is currently  
16 Defendant's Exhibit D.

17 MS. STAFFORD: B.

18 THE COURT: B? No. Did you use this document to  
19 prepare the exhibit that you are trying to get in which is  
20 Defendant's Exhibit D.

21 THE WITNESS: Yes.

22 THE COURT: You did. Okay. So that covers the  
23 government's objection. Otherwise no objection?

24 MS. LESTER: That's right, your Honor.

25 THE COURT: I didn't want to question but there is

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Macedonio - direct

1 some maps in here, right?

2 THE WITNESS: Yes; in the presentation. Right.

3 THE COURT: The maps have a line that shows point A to  
4 point B, right?

5 THE WITNESS: It is not a direct line, it is like --  
6 because you couldn't obviously travel through these buildings  
7 that are depicted.

8 THE COURT: But there is lines and they zig-zag; what  
9 do the lines depict?

10 THE WITNESS: They depict what is supposed to be the  
11 fastest travel location from A to B.

12 THE COURT: And A and B are what?

13 THE WITNESS: Different cell towers.

14 THE COURT: And is it your understanding that you have  
15 to drive to a cell tower to be able to get a cell phone to hit  
16 off of it?

17 THE WITNESS: No. The directions aren't as important  
18 as just showing the location.

19 THE COURT: Why are the directions important at all?

20 THE WITNESS: The directions are important --

21 THE COURT: Why are they relevant at all?

22 THE WITNESS: They're relevant in that to utilize  
23 either cell tower you have to be within a range of each cell  
24 tower, right. So, to get from using cell tower A to using cell  
25 tower B you would have to, in theory, move from one place to

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Macedonio - direct

1 another.

2 THE COURT: But you wouldn't have to drive from one  
3 cell tower to the other, right?

4 THE WITNESS: No. You could walk. But, in the  
5 instance of -- which slide are you looking at?

6 THE COURT: Looking at page 3 -- well, no, page 5 of  
7 Defendant's Exhibit D.

8 THE WITNESS: Okay. So, in page 5 the driving  
9 distance of 1.9 miles is shown and that is call 267.

10 THE COURT: I know what it shows. I'm asking why  
11 would it matter? Whether you get cell coverage doesn't turn on  
12 whether you are standing on the cell tower, right?

13 THE WITNESS: No, you don't have to be standing on it,  
14 you have to be standing within a certain range of that cell  
15 tower.

16 THE COURT: Right. So the fastest route to drive  
17 there is -- I guess my question is to relevance. There is no  
18 objection on relevance grounds but I just don't want the jury  
19 confused by all of this.

20 So, it is in, I'm going to allow it in. Defendant's  
21 Exhibit D-1 is received but maybe we'll have some questions  
22 when we look at some things, okay?

23 (Defendant's Exhibit D-1 received in evidence)

24 THE COURT: Next.

25 MS. STAFFORD: Thank you, your Honor.

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Macedonio - direct

1 BY MS. STAFFORD:

2 Q. I approach showing the witness Defendant's Exhibit E and I  
3 am providing the Court an additional copy.

4 Can you look at that, Mr. Macedonio? Do you recognize  
5 these documents?

6 A. I do.

7 Q. How do you recognize these document?

8 A. I have created them.

9 Q. And how did you create this document?

10 A. This document I was given two locations, one being a  
11 residence and one being the location of a cell tower.

12 Q. And, is that the same program that you used to create  
13 Defendant's Exhibit E?

14 A. Yes, the same program Google Maps -- my apologies again for  
15 the driving directions. I don't know why I thought that was  
16 relevant. Sorry.

17 Q. Don't apologize.

18 And is there information that is not contained in any  
19 government exhibit that's on that particular slide?

20 A. I'm not sure if the residence location is contained in a  
21 government exhibit.

22 Q. And how did you get that residence location?

23 A. It was given to me.

24 Q. And who was that given to you by?

25 A. By yourself.

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Macedonio - direct

1 Q. And was that also given to you by --

2 How did you locate that address and that map?

3 A. I just plugged it into the program and it came right up.

4 Q. Is that -- how did you create that printout?

5 A. The same way I did the printouts on D, I just clicked print  
6 and then you can save to PDF instead of printing to create a  
7 picture and I just used the picture.

8 Q. And, is that fair and accurate depiction of what you  
9 printed out?

10 A. Yes.

11 MS. STAFFORD: Your Honor, I would ask to admit  
12 Defense Exhibit E at this point.

13 THE COURT: Any objection?

14 MS. LESTER: No, your Honor.

15 THE COURT: Hold on.

16 MS. STAFFORD: Sorry.

17 THE COURT: Can we have a quick side bar? I want to  
18 make sure I'm not missing something.



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Macedonio - direct

1 (At side bar)

2 THE COURT: I don't understand what is the relevance  
3 of the driving distance between two cell towers.

4 MS. STAFFORD: I will explain the difference.

5 THE COURT: Explain it to me because I think you are  
6 having a tough time doing that.

7 MS. STAFFORD: Well, from the call records there are  
8 certain phone calls, your Honor, that show towers where the  
9 phone call is starting at one place and ending at another  
10 place.

11 THE COURT: I get that. I get that, but towers cover  
12 areas.

13 MS. STAFFORD: Correct.

14 THE COURT: So one doesn't have to be standing on one  
15 tower and then standing on the other tower to get switched. I  
16 think it's incredibly misleading to suggest -- let's look at  
17 the exhibit that I asked your witness about.

18 So, what is to be inferred from the fact that you have  
19 to drive west, then south, then farther west and then do a loop  
20 and then drive north along the Bronx River Parkway to get to  
21 the second tower?

22 MS. STAFFORD: What is to be inferred is that it is  
23 impossible for a person to make it -- to be within the  
24 proximity of that particular cell tower.

25 THE COURT: But what if you walked two friggin blocks

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Macedonio - direct

1 to there or to there? This is irrelevant. The government  
2 didn't object on relevancy grounds but my job is not to mislead  
3 the jury so why is this relevant? And anybody can jump in.

4 You guys objected to the exhibit that had a closed  
5 loop on a "V" because you said there was no basis for saying  
6 the distance was limited by that loop and I took it out. Why  
7 on earth does the jury need to know the driving distance  
8 between two towers rather than just the point of these towers?

9 MS. FONTIER: Your Honor, I think that the primary  
10 issue is the way to get the two points listed on the same map  
11 on Google Earth puts the driving directions in and I think  
12 that, obviously, it's open for argument that you could do that,  
13 you could walk there. We're not saying that you would have to  
14 drive this way, it is just a --

15 THE COURT: Why is it relevant that this is one way  
16 you could go? Why is it relevant that that's 1.9 miles and  
17 five minutes?

18 MS. FONTIER: Google Maps produces the fastest driving  
19 directions.

20 THE COURT: I don't care. Why is it put in?

21 MS. FONTIER: Because if there was -- the argument --

22 THE COURT: We're not bound by Google Maps. The fact  
23 that Google Maps does something doesn't mean that's the way  
24 this Court has to accept it. Why does anybody care about the  
25 driving distance between point A and point B?

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Macedonio - direct

1 MS. FONTIER: Because all of the testimony in this  
2 case is about the car and them driving around in the car and if  
3 they're going from cell tower to cell tower.

4 THE COURT: But you don't have to be on top of a cell  
5 tower to hit the cell tower. This supposes or presupposes that  
6 you have to be standing on one and then standing on the other  
7 to get a switch. That is false. There is no basis for that so  
8 this is irrelevant.

9 MS. FONTIER: We're not going to elicit that  
10 testimony.

11 THE COURT: What is the basis for including this line?

12 MS. STAFFORD: The basis is --

13 THE COURT: Are you implying that anybody drove that  
14 route?

15 MS. STAFFORD: No.

16 THE COURT: Are you implying that anyone would need to  
17 describe that route?

18 MS. STAFFORD: No.

19 THE COURT: Why is it there?

20 MS. STAFFORD: It is there to demonstrate that it  
21 would be impossible for the phone call to happen the way it  
22 happened and therefore the accuracy of the records -- the  
23 accuracy of the records are questionable because the phone call  
24 is starting here and then it's starting two miles away,  
25 therefore it would be impossible for a person to get from point

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Macedonio - direct

1 A to point B within the --

2 THE COURT: You don't have to get to point A to point  
3 B to get coverage of a tower. You know that as well as I know  
4 that. That's how cell towers work. You could have started  
5 here and driven here and you move from one cell tower to  
6 another depending on what the coverage is but there is no  
7 suggestion that you have to drive this route to get coverage.

8 MS. STAFFORD: Right.

9 THE COURT: This is not coming in. Take it out. You  
10 can get it in, you can revise this but not -- the jury is not  
11 seeing driving distance. It is utterly misleading. It is  
12 designed to mislead the jury and I'm not going to let you do  
13 it.

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Macedonio - direct

1 (In open court)

2 THE COURT: I'm going to allow in Defendant's Exhibit  
3 D with a modification that the parties will correct before the  
4 jury sees it. Okay.

5 (Defendant's Exhibit D received in evidence)

6 THE COURT: And with respect to E, the same proviso.  
7 Okay? The lines come out, As and Bs stay.

8 (Defendant's Exhibit E received in evidence)

9 MS. STAFFORD: May I approach, your Honor?

10 THE COURT: Yes.

11 BY MS. STAFFORD:

12 Q. Mr. Macedonio, I'm showing you what's marked as Defendant's  
13 Exhibit F and ask you if you recognize it.

14 A. I do.

15 Q. And what is it?

16 A. It is a CD containing the PowerPoint presentation that I  
17 just read over.

18 THE COURT: Which PowerPoint presentation?

19 THE WITNESS: This one; Defendant's Exhibit C, D and  
20 E.

21 THE COURT: It has got them all?

22 THE WITNESS: Yes.

23 BY MS. STAFFORD:

24 Q. Did you create this CD?

25 A. I did.

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Macedonio - direct

1 Q. And are those your initials on the CD?

2 A. They are.

3 Q. And do they incorporate all the documents that have been  
4 introduced --

5 A. Yes.

6 Q. -- as Defendant's Exhibit D, C, and E?

7 A. Yes.

8 MS. STAFFORD: I move to admit Defendant's Exhibit  
9 E --

10 THE COURT: F?

11 MS. STAFFORD: I mean F, subject to your Honor's  
12 modification.

13 THE COURT: But just so I'm clear, does Defendant's  
14 Exhibit F have them broken up as D and E?

15 THE WITNESS: Yes, it does.

16 THE COURT: So it is exactly the way they're printed  
17 out --

18 THE WITNESS: Yes.

19 THE COURT: -- is how they appear on the disk.

20 THE WITNESS: Yes, your Honor.

21 THE COURT: So, with that one caveat that Ms. Stafford  
22 just indicated, I will accept Defendant's Exhibit F in  
23 evidence. It is received.

24 (Defendant's Exhibit F received in evidence)

25 MS. STAFFORD: We would like to start with publishing

D3E5dor2

Macedonio - direct

1 Defendant's Exhibit C and then I will let you know, if we may?

2 THE COURT: Yes. That's fine.

3 BY MS. STAFFORD:

4 Q. Mr. Macedonio, what is depicted in this slide?

5 A. This is a cell tower located at 2705 Colden Avenue in the  
6 Bronx and it is used by phone numbers 347-883-8414,  
7 917-200-1367 and 704-345-3805.

8 Q. There are several triangles and dates and times; what does  
9 that refer to?

10 A. They just refer to different cell phone calls, text  
11 messages, and basically any time that that tower is utilized by  
12 the phone.

13 Q. When you say the phones you are referring to the number  
14 that you just stated?

15 A. Yes.

16 Q. If we can go to the next page, please?

17 And, again, please tell us what this depicts?

18 A. It is the same kind of image, it just looks like a  
19 different cell tower than it is, it is at 275 West 238th Street  
20 in the Bronx.

21 Q. Can you read that again, the address, please?

22 A. 275 West 238th Street in the Bronx.

23 Q. And what else does it depict?

24 A. It depicts where that cell tower is and it also depicts,  
25 again, different times and dates where that cell tower is

D3E5dor2

Macedonio - direct

1 utilized by the numbers listed.

2 Q. Again, if you can explain the triangles and the dates and  
3 times next to those triangles?

4 A. Sure.

5 The triangles are indicative of any location, they're  
6 where they're placed, but they're indicative of different dates  
7 and times that the cell tower is utilized by these phone  
8 numbers.

9 Q. And at the top of the screen it says cell tower located at  
10 the address we just stated and it says on December -- I'm  
11 sorry. It says on, and what date is that?

12 A. 12/05/11.

13 Q. And it also says other times?

14 A. Yes.

15 Q. And the other times are they depicted within the slide?

16 A. Yes. I see 12/4, 10/12. All different dates.

17 Q. Ms. Brady, if you can go to the next slide, please?

18 Finally, can you please tell us also what this slide depicts?

19 A. This is a cell tower located at 715-719 233rd Street in the  
20 Bronx.

21 Q. And it is utilized by what phone numbers?

22 A. 734-883-8414, 917-200-1367 and 704-345-3805.

23 Q. And you indicated a time period that you recall from the  
24 records?

25 A. This looks like just the entirety of the records.



D3E5dor2

Macedonio - direct

1 Q. Okay. You don't recall the time period, the years, the  
2 months that the records reflected?

3 A. 2011 to, I think, some of the last days I had seen were in  
4 January 2012.

5 Q. Okay.

6 MS. STAFFORD: Your Honor, did you want me to make the  
7 modifications to the next exhibit?

8 THE COURT: If you can do it on the fly; otherwise, it  
9 will be in evidence and the jury can look at it but I'm not  
10 going to let them see it as it is currently configured.

11 MS. STAFFORD: We are going to do this with the  
12 overhead.

13 THE COURT: So, what are you putting on the overhead?

14 MS. STAFFORD: I'm going to be publishing, with your  
15 permission, Defendant's Exhibit D-1.

16 MS. FONTIER: Your Honor, this would include the  
17 slides with the maps, the slides leading up to the maps without  
18 actually showing the maps.

19 THE COURT: You know my instruction so I assume you  
20 are going to follow it.

21 MS. FONTIER: Yes, your Honor.

22 MS. STAFFORD: Absolutely.

23 THE COURT: Go ahead.

24 BY MS. STAFFORD:

25 Q. Mr. Macedonio, would you look at the screen, please? D-1,

D3E5dor2

Macedonio - direct

1 what does that indicate?

2 A. This is an historical cell detail analysis, cell site  
3 analysis for phone numbers 704-345-3805, 704-756-5031,  
4 917-200-1367.

5 Q. And, did you utilize those telephone numbers and create  
6 some charts?

7 A. Yes, I did.

8 Q. I'm going to show you page 2 of Defendant's Exhibit D and I  
9 want you to focus on call number 267.

10 A. Okay.

11 Q. And can you please explain to us the information that's  
12 depicted there?

13 A. Sure. It is the call number as listed in the cell site  
14 information spreadsheet that I was provided from Government  
15 Exhibit 2010. The first LAC used, the second LAC used by that  
16 phone call, the first cell tower and the second cell tower used  
17 by that phone call, and also the duration of the phone call in  
18 seconds.

19 Q. And how long was the phone call?

20 A. Eight seconds.

21 Q. And, I'm going to now put on page 3; can you tell me what  
22 that slide indicates?

23 A. This slide just indicates that on call 267 the cell I.D.  
24 switches from A to B during the course of that phone call.

25 Q. And do you know the relative distance -- you can refer to

D3E5dor2

Macedonio - direct

1 the document in front of you but don't --

2 A. From A to B?

3 Q. Are you able to determine the distance -- not the traveling  
4 distance but just the distance between those two towers?

5 A. I would have to estimate it.

6 MS. STAFFORD: Would that be permissible, your Honor?

7 THE COURT: You can estimate. What is your basis for  
8 estimating?

9 THE WITNESS: Well, in front of me I have travel  
10 directions and I would just kind of do a visual estimation  
11 based on that.

12 THE COURT: What is your estimate of the distance  
13 between the two towers?

14 THE WITNESS: About a mile and a half.

15 THE COURT: Mile and a half. Okay.

16 BY MS. STAFFORD:

17 Q. And so call 267 registered at tower A and then it  
18 registered at tower B?

19 A. Yes; during the course of the phone call.

20 Q. And the distance, you said, was approximately what?

21 A. Looks like about a mile and a half, based on what I have in  
22 front of me here.

23 Q. And the length of the call was how long?

24 A. Eight seconds.

25 Q. I'm now going to refer you to page no. 6 of Defendant's

D3E5dor2

Macedonio - direct

1 Exhibit B. -- I'm sorry, 7, and ask you to focus on call 26.

2 A. Okay.

3 Q. How long was that phone call?

4 A. Six seconds.

5 Q. And can you approximate -- well, that phone call registered  
6 on a tower that labeled as tower A?

7 A. Yes.

8 THE COURT: Where do you label it as tower A?

9 THE WITNESS: It is on the next page.

10 THE COURT: But tower A is 23356? Is that what you're  
11 saying? What is the tower? 52198?

12 BY MS. STAFFORD:

13 Q. How did you determine the location of the towers for this  
14 particular exhibit?

15 A. For this particular exhibit I utilized the cell site  
16 records in Government Exhibit 2010 and there is also a key  
17 coming with it telling you how to look up where that tower is  
18 and it comes from T-Mobile which is the phone company here.

19 Q. And if you can refer to page 8?

20 A. Okay.

21 Q. And does that correspond with the phone call 268? Is that  
22 correct?

23 A. Yes, it is.

24 Q. And, tower A, do you know the location of that tower?  
25 Approximately?

D3E5dor2

Macedonio - direct

1 A. It is in between Martin Luther King Boulevard and Second  
2 Street.

3 Q. And how about tower B? Do you know the approximate  
4 location of that tower?

5 A. Sure. It is 20 Secor Place, Yonkers New York.

6 Q. And, do you know the approximate distance between the  
7 towers?

8 A. Again, it looks like about a mile and a half.

9 Q. And if you can move down to call No. 320?

10 A. Okay.

11 Q. Now, the duration of that phone call was how long?

12 A. 320 is 13 seconds long.

13 Q. And, do you know the approximate location of the first  
14 tower that the phone call registered with, tower A?

15 A. It is right off Bronx River Parkway around, like 235th  
16 Street in the Bronx.

17 Q. And, do you know the approximate location of tower B?

18 A. It is 167 Saw Mill River Road in Yonkers.

19 Q. And, do you know approximately the distance between those  
20 two towers?

21 A. This one looks like it might be around like three miles,  
22 three and a half miles.

23 Q. I'm sorry. Just a moment, your Honor.

24 I am now placing on the ELMO page 36 of Defendant's  
25 Exhibit D. Can you tell me the telephone number for that

D3E5dor2

Macedonio - direct

1 exhibit?

2 A. Sure. It is 917-200-1367.

3 Q. And I'm now putting on page no. 35, Defendant's Exhibit D  
4 and can you tell me what is stated in that exhibit?

5 A. This exhibit states that a phone call numbered 222 in the  
6 spread sheets that I used from Government Exhibit 2010 switches  
7 from cell tower location A to location B during the course of a  
8 one-minute phone call on January 3rd, 2013 -- it should be  
9 12 -- at 12:59 p.m.

10 Q. And, tower A, do you know approximately where that is  
11 located?

12 A. It is located almost right on the FDR drive in between the  
13 FDR Drive and First Avenue at 105th Street.

14 Q. And, do you know where tower B is located in relation to  
15 tower A?

16 A. It is located in Queens right over the RFK Bridge on --  
17 very close to 21st Street.

18 Q. And, is it fair to say that that's across the East River?

19 A. Yes, it is.

20 Q. Can you give us an approximate distance between the two?

21 A. Maybe, again, a mile and a half, little more.

22 Q. And how long was the phone call?

23 A. This is 222 --

24 Q. I will put it up.

25 A. -- is 61 seconds.

D3E5dor2

Macedonio - direct

1 Q. Sorry. Did you see it?

2 A. Yes; 61 seconds long.

3 Q. Thank you.

4 Can you take a look at Defendant's Exhibit E,  
5 Mr. Macedonio?

6 A. Okay.

7 Q. And that's -- what is that?

8 A. This is just a map of a cell tower used in a phone call at  
9 11:17 a.m. on 12/12/11 by phone number 704-756-5031; and B  
10 shows the cell tower on the map and A shows a residence given  
11 to me.

12 Q. And, can you give the approximate address of A?

13 A. It's 3983 Carpenter Avenue in the Bronx.

14 Q. And how about B?

15 A. 3990 Bronx Boulevard in the Bronx.

16 Q. And, do you know the time that that phone call was made?

17 A. 11:17 a.m.

18 Q. Do you happen to know where in relation the cell tower is  
19 to 3983 Carpenter Avenue?

20 A. It is on the same block just on the opposite side of the  
21 block.

22 MS. STAFFORD: Thank you, Mr. Macedonio. I have no  
23 further questions.

24 THE COURT: Cross-examination.

25 MS. LESTER: Yes, your Honor. Thank you.

D3E5dor2

Macedonio - direct

1 CROSS EXAMINATION

2 BY MS. LESTER:

3 Q. Good morning.

4 A. Good morning.

5 Q. What's your title -- first of all, where do you work?

6 A. I work at a law office in Queens.

7 Q. What's your title there?

8 A. Paralegal.

9 Q. Have you testified in court previously?

10 A. This is my first time.

11 Q. Do you have any experience with cellular telephones other  
12 than your own personal use of a cellular telephone?

13 A. Cellular telephones or records?

14 Q. Cellular telephones.

15 A. That's pretty much it, my own.

16 Q. Have you ever spoken to cell phone companies about the  
17 coverage range of their cell towers?

18 A. No, I haven't.

19 Q. Have you ever researched what the coverage range is for a  
20 cell tower?

21 A. Only in that I have heard people testify about it --  
22 experts testify about it.

23 Q. You personally don't have any knowledge about that?

24 A. Other than that, no.

25 Q. In preparation for your testimony here today you reviewed



D3E5dor2

Macedonio - cross

1 call detail records and cell site records, correct?

2 A. Yes.

3 Q. And you testified that you created Defense Exhibit C-1  
4 based on your review of those records, correct?

5 A. Yes. I created this exhibit.

6 Q. But you said a portion of the exhibit had been prepared  
7 previously, that is the image from Google Earth, is that right?

8 A. That's right.

9 Q. And that was prepared by someone else?

10 A. It was.

11 Q. And you called that person a cell site expert?

12 A. That's what he has been referred to, yeah.

13 Q. Who is that person?

14 A. He's a guy known only to me as Gus, I think his last name  
15 is Dimitrios.

16 Q. Who does he work for?

17 A. I believe he was working for the defense before I came into  
18 the case.

19 Q. Did you ever talk with him about what he had prepared?

20 A. I did.

21 Q. And, did you discuss with him how he prepared the maps in  
22 Google Earth?

23 A. Yes.

24 Q. Did he explain the process to you?

25 A. Yes, he did.

D3E5dor2

Macedonio - cross

1 Q. Can we take a look at, Ms. Brady, the second page of  
2 Defendant's Exhibit C-1? Or you don't have it.

3 Mr. Macedonio, if you could just look at that  
4 yourself?

5 A. Okay.

6 THE COURT: It is in evidence, there is a disk.

7 MS. STAFFORD: You have Defendant's Exhibit F, right?

8 THE COURT: If you don't care, I don't but it is in  
9 evidence is my point.

10 BY MS. LESTER:

11 Q. Mr. Macedonio, on direct I think you verified that the  
12 records through 2705 Colden Avenue is an actual tower location,  
13 is that right?

14 A. Yes.

15 Q. And you verified that this map accurately depicted where  
16 2705 Colden Avenue is in the Bronx, is that right?

17 A. I believe so. Yes.

18 Q. But you didn't verify whether each phone call that's  
19 supposedly shown on this map actually appears in the call  
20 detail records, is that right?

21 A. No. Not each phone call, no.

22 Q. And, are all three of these phone numbers that are listed  
23 here, the number ending in 8414, the number ending in 1367 and  
24 the number ending in 3805, are those all under the same service  
25 provider?

D3E5dor2

Macedonio - cross

1 A. I don't know off the top of my head. I know that a lot of  
2 the numbers that I used were on T-Mobile.

3 Q. So, do you know who the service provider is for 8414?

4 A. I would have to guess. Right now I have an idea but I  
5 don't know for sure.

6 Q. What about 1367?

7 A. I'm pretty sure that's T-Mobile.

8 Q. And what about 3805?

9 A. Again, I'm pretty sure that's T-Mobile.

10 Q. Do you have an understanding of whether phones that are  
11 under one service provider can use towers from a different  
12 service provider?

13 A. Not my only personal knowledge. From what I have heard  
14 from testimony, I believe so.

15 Q. So you actually, yourself, don't have any personal  
16 knowledge of that though?

17 A. No.

18 Q. You also, up here at the top of the exhibit, have listed  
19 10/29/11 as a date and other times. Do you see that?

20 A. Yes.

21 Q. Now, looking at the exhibit itself, it appears that there  
22 are quite a few calls on 10/29/2011, in fact I believe there  
23 are at least 18 calls on that particular date.

24 Did you do any analysis as to how many calls were on  
25 any particular date?

D3E5dor2

Macedonio - cross

1 A. No, I did not.

2 Q. Is it fair to say, looking at this map, just eyeballing it,  
3 that the majority of the calls appear to have taken place in  
4 October?

5 A. Let me take a look quickly. There are a lot in October,  
6 yes.

7 Q. Again, this map doesn't indicate which calls were made by  
8 which phone number so we don't know which call was made by 8414  
9 versus 1367 for example, right?

10 A. Not by looking at this, no.

11 Q. And we don't know which one was made by the 3805 number  
12 either?

13 A. You couldn't tell just looking at this exhibit, no.

14 Q. And I think you testified that you don't know the exact  
15 date ranges off the top of your head of the periods of time  
16 covered through the call detail records and cell site records  
17 that you reviewed, is that right?

18 A. That's right.

19 Q. But you testified that this map was created using whatever  
20 records were available to you through the government's exhibits  
21 and the defendant's exhibit that you testified about, is that  
22 right?

23 A. Yes.

24 Q. So, sitting here today you don't know what date range is  
25 actually displayed in this map, what period of time?

D3E5dor2

Macedonio - cross

1 A. I mean, I could count it and figure it out but.

2 Q. But you don't know what date range of records were used to  
3 create this map off the top of your head sitting there?

4 A. Not off the top of my head.

5 Q. If we could go to the third page, the third slide?

6 Mr. Macedonio, this exhibit shows a cell tower located  
7 on 233rd Street in the Bronx; is that right?

8 A. Yes.

9 Q. Do you know why you were asked to select that location for  
10 the cell tower to be displayed in this map?

11 A. I don't.

12 Q. Were you directed to pick out particular cell towers to  
13 look at?

14 A. Yes.

15 Q. And who gave you that information?

16 A. Ms. Stafford.

17 Q. And this exhibit actually doesn't have a date range in the  
18 header, it just says: And other times?

19 A. Right.

20 Q. And, again, there are the three phone numbers here listed  
21 8414, 1367, 3805; correct?

22 A. Yes.

23 Q. And there is no designation in the visual portion of the  
24 map as to which of those cellular telephones made those phone  
25 calls on particular days; we don't know that, correct?

D3E5dor2

Macedonio - cross

1 A. No, you don't.

2 Q. And did you follow the same procedure that you used with  
3 respect to the other map that we just looked at that is you  
4 verified the tower location, that that was correct on the map  
5 but you didn't individually verify each phone call, is that  
6 right?

7 A. That's right.

8 Q. Mr. Macedonio, you have worked on this case, you made  
9 reference to the fact that you have spoken with a cell site  
10 person who was retained by the defense, correct?

11 A. Yes.

12 Q. Are you familiar with some of the locations about which  
13 there has been testimony in this case?

14 A. The only work I've done in this case is really with these  
15 spread sheets and with these slides.

16 Q. Are you familiar with the location of a store at 233rd and  
17 White Plains Road about which there has been testimony in this  
18 case?

19 A. I haven't been in court or reading testimony or anything  
20 like that.

21 Q. Do you know if that's why you were asked to look for a  
22 tower located at 233rd Street in the Bronx?

23 A. I don't know.

24 MS. LESTER: May I have a moment, your Honor?

25 THE COURT: Yes.

D3E5dor2

Macedonio - cross

1 (Pause)

2 MS. LESTER: No further questions.

3 THE COURT: Any redirect?

4 MS. STAFFORD: No, your Honor.

5 THE COURT: Okay. You may step down, Mr. Macedonio.

6 Thank you. Leave that there, let the lawyers do something.

7 THE WITNESS: Okay.

8 (Witness steps down)

9 THE COURT: Defense, your next witness?

10 MS. FONTIER: Your Honor, at this time I will read a  
11 stipulation.

12 THE COURT: Okay.

13 MS. FONTIER: The parties reached a stipulation in the  
14 matter of United States against Jermaine Dore which states:  
15 The parties, Jermaine Dore, Dwayne Barrett and the United  
16 States, hereby stipulate and agree to the following facts:

17 1. A forensic examination of the 2009 Toyota Sienna  
18 New York plate no. DLX 9048 was conducted on December 19, 2011.  
19 During this examination, pertinent and conducive areas and  
20 items in the interior and exterior of the vehicle were  
21 processed in a conventional way for swab DNA samples and latent  
22 fingerprints.

23 2. A forensic examination of the 2003 Mercedes Benz  
24 New York plate no. FMB 7467 was conducted at the time and in  
25 the manner as testified to by NYPD Detective Daniel Mulvanerty.

D3E5dor2

1           3. Oral swabs of DNA were taken from Jermaine Dore  
2 and Dwayne Barrett and submitted to the Office of the Chief  
3 Medical Examiner.

4           4. Jermaine Dore is not a match for any of the DNA  
5 samples that were tested.

6           5. Dwayne Barrett is not a match for any of the DNA  
7 samples that were tested.

8           6. Jermaine Dore is not a match for any of the latent  
9 fingerprints that were examined.

10          7. Dwayne Barrett is not a match for any of the  
11 latent fingerprints that were examined.

12          And this is executed March 14th, 2013, in New York,  
13 New York, signed by Alice L. Fontier, attorney for Jermaine  
14 Dore, James Roth, attorney for Dwayne Barrett, Jessica Masella  
15 and Amy Lester, Assistant United States Attorneys.

16          That is the stipulation of the parties.

17          THE COURT: All right.

18          Any further evidence or witnesses whom the defense  
19 wish to call?

20          MS. FONTIER: No, your Honor. The defense would rest  
21 at this time.

22          THE COURT: Mr. Roth?

23          MR. ROTH: The defendant rests, your Honor.

24          THE COURT: Is there a rebuttal case that the  
25 government wishes to put on?



D3E5dor2

MS. LESTER: Yes, your Honor.

THE COURT: Who does the government wish to call?

MS. LESTER: Your Honor, the government wishes to recall Special Agent David Magnuson.

THE COURT: Is he here?

MS. LESTER: He is, your Honor. Before we do that we have one issue with respect to Agent Magnuson's testimony. We can either --

THE COURT: Why don't we take a short break. It is 11:00 now, it is earlier than I normally would break but we can use the time while you folks are relaxing, using the bathroom and drinking cold coffee.

We will make it short.

All rise for the jury.

(Continued on next page)

D3E5dor2

(Jury not present)

THE COURT: What is the issue?

MS. LESTER: Your Honor, we believe at this point through Defendant's Exhibit D, the one with the maps indicating the distance between two cell towers, that the defendants have now opened the door to the issue of coverage area and we should be able to have Agent Magnuson testify based on his expertise. We don't need to qualify him as an expert but he obviously has knowledge of the coverage area range of cell towers, how cell towers operate, how it is possible for an 8-second call to take place, and for the handset to switch from one cell tower to another.

THE COURT: I think, clearly, that door has been opened, so I assume that's why you were calling him. So, yes, that's fine.

Anybody want to be heard? Is the defense suggesting otherwise?

MS. FONTIER: As long as it is limited to the testimony that was just proffered I don't think we would have an opposition.

THE COURT: Yes. I mean, the jury has heard -- I think the clear implication from the questions that were put to Mr. Macedonio about the distance between cell towers and the length of the calls was that somebody would have to travel a mile and a half in six seconds and that, I think, is not

D3E5dor2

1 accurate in terms of you could get a switch from -- on one call  
2 from one tower to another by moving a block or, you know, half  
3 a block. And so, I think it is clearly fair rebuttal  
4 testimony. So, let's see what he has to say.

5 Anything else?

6 MS. LESTER: No, your Honor.

7 (continued on next page)

D3eWdor3

1 MS. LESTER: No, your Honor.

2 THE COURT: Anything else from the defense at this  
3 point?

4 MR. MURPHY: No.

5 THE COURT: So then let's take a short break and we'll  
6 pick up again. We will have to talk about what we want to do  
7 with Ms. Schuster. So why don't we do that now before the  
8 break and maybe just start. Okay? Ms. Fontier indicated she  
9 had no objection to excusing Ms. Schuster. We didn't hear what  
10 Ms. Schuster has to say.

11 Does anybody else have any thoughts?

12 MS. MASELLA: Your Honor, at this point just because  
13 it's unclear what exactly her date conflict is, I think it  
14 would make sense to have her come back on Monday to hear the  
15 closings, with the other alternates, and then at that point  
16 decide what the likelihood is that her timing will be a  
17 conflict or not.

18 THE COURT: So don't even ask her today, you mean?

19 MS. MASELLA: We could ask her if she has plans. Who  
20 knows what her plans are. But I would suggest that we not make  
21 a decision with respect to her until Monday. We have some idea  
22 as to when the case is going to go to the jury.

23 THE COURT: It's not a hardship for her to be here  
24 Monday, right, unlike Mr. Soto-Valdez who, frankly, was dipping  
25 into the vacation time, and I felt bad for the guy.

D3eWdor3

1 Ms. Schuster has never complained about being here. It doesn't  
2 seem like it's a financial hardship for her. It's just that  
3 she has this other concern. If we address that Monday, that's  
4 fine, but I think we should at least find out what plans she's  
5 already made and what her schedule is as of today. That could  
6 change between now and Monday, I suppose.

7 My law clerk is saying that he inferred, based on what  
8 she said, that she was considering leaving on Wednesday. Let's  
9 ask her. We'll ask her now, but my inclination is not to  
10 excuse her today. But I think we should be thinking about it,  
11 and let's get the information from her before she leaves today.  
12 Okay? Let's take a short break.

13 (Recess)

14 (Continued on next page)

D3eWdor3

(In open court; jury present)

THE COURT: Have a seat.

We will now hear from the government's rebuttal witness. I'll just remind you, Mr. Magnuson, you're still under oath.

THE WITNESS: Yes, sir.

DAVID MAGNUSON, recalled.

THE COURT: Ms. Lester.

DIRECT EXAMINATION

BY MS. LESTER:

Q. Good morning, Special Agent Magnuson?

A. Good morning.

Q. Have you had conversations during the course of your duties as a member of FBI's cellular analysis survey team with the service providers whose phone records you analyzed?

A. Yes. Very often I communicate directly with the legal compliance department or their network engineers.

Q. Speaking with particularly the network engineers, what topics do you discuss with them relative to how a cellular network or their particular cellular network operates?

A. Well, we communicate with them on --

MR. ROTH: Objection. If he could testify in the first person.

THE COURT: Yes, just your conversation.

THE WITNESS: Thank you. Yes.

D3eWdor3

Magnuson - direct

1 A. I communicate on a wide variety of issues, from placement  
2 of towers, direction or tuning of antennas, range of RF energy,  
3 how cell phones work within their network and on their  
4 technology base. Could be any number of issues.

5 Q. You just mentioned the term range of RF. What was the last  
6 word?

7 A. Energy.

8 Q. Energy. What do you mean by that?

9 A. Well, a cellular network is made up of radio frequencies,  
10 and that's a form of electromagnetic energy, and they design  
11 the network, they kind of carve it up and compartmentalize it  
12 so that they can reutilize a very limited number of frequencies  
13 that they're assigned to by the Federal communications agency.  
14 So each cell within a cellular network is a very specific  
15 bordered group of energy so they can manage their network  
16 precisely.

17 Q. Have you had any conversations with network engineers, and  
18 let's use Sprint as an example, with Sprint's network  
19 engineers, about how their towers are laid out and the coverage  
20 areas for those towers?

21 A. Yes, I have.

22 Q. And what is your understanding of how Sprint's network or  
23 other cellular telephone networks are laid out, in terms of the  
24 relative distance between towers?

25 A. Well, the relative distance is totally dependent on

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1 relative environment that the towers are going to be installed.  
2 They'd have to analyze the environment, whether it's urban or  
3 countryside or riverside, highway-side, and then they determine  
4 the needs of their subscribers, kind of capacity they're going  
5 to be serving, and then they design and implement the cellular  
6 network to meet the needs of the subscribers. So, for  
7 instance, in an urban area like the city here, you can take  
8 full advantage of all the buildings here because they're  
9 instant infrastructure. They don't have to put up a tower.  
10 They can tap into the electricity, bolt an antenna on the side  
11 of a building or bridge. So they have a lot of opportunity to  
12 carve up and provide quality service even in an area which  
13 might have impediments to RF signal propagation.

14 Q. What do you mean by impediments to RF signal propagation?

15 A. Certain natural objects, and manmade, provide some kind of  
16 impediment to the signal being sent out, but most objects do  
17 not reflect energy; they kind of absorb it so it still goes  
18 through into buildings. But when you design a cell phone  
19 network, most of your antennas are up higher than the users and  
20 they're pointing down into a very specific area.

21 Q. And in setting up the towers in a certain geographic  
22 location, what is the goal of the service provider?

23 A. The goal is to provide seamless quality service in any  
24 geographic area so that they, they strive to ensure that  
25 there's pockets of energy, cellular energy, that can take your



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1 call and that it can be handed off into the next cell and the  
2 next cell, as you move throughout the network.

3 If you're stationary and the signal, the antenna that  
4 you're communicating with starts to get some kind of noise on  
5 it or less desirable, the network can hand you off to a more  
6 desirable quality signal so that you don't drop your call. The  
7 handset is constantly looking at the network, and it sees up to  
8 six sectors at a time. And it's constantly prioritizing those  
9 on quality and strength and always putting the next available  
10 best quality signal is the next one I'm going to go to if the  
11 one I'm on now tends to degrade.

12 Q. Is it possible for a cellular telephone to switch cell  
13 towers based on the issues you just discussed, coverage and  
14 strength of signal, without the physical handset of the phone  
15 actually moving?

16 A. Yes. That can occur, depending upon what we're look --  
17 what the phone is seeing and what the network is telling the  
18 handset. During a call, the network computer and the handset,  
19 which is a computer, really the phone's a computer, they're  
20 communicating on control channels all the time, and the network  
21 is telling the phone either to decrease or increase your  
22 battery output, to keep your call at optimum, because it  
23 doesn't want to drain your battery and wants to give you a  
24 strong signal, because it knows that you have a very small  
25 battery and if it drains your battery every three hours, it

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1 would be very undesirable. So there's a lot of communication  
2 protocol going on, control channels telling the phone what the  
3 network wants to do and vice versa.

4 MS. LESTER: Ms. Brady, could we put up Government  
5 Exhibit 3008, the fifth page.

6 Q. Agent Magnuson, this is one of the pages from the exhibit  
7 that we went through on your direct testimony. Do you recall  
8 this page?

9 A. Yes.

10 Q. Can you just remind the jury what we are looking at here in  
11 this depiction?

12 A. This is a map, portion of, appears to be Mount Vernon, New  
13 York. It's a Sprint, icons on the map, there's two different  
14 colors. In this particular case, the red ones are Sprint  
15 towers, locations of Sprint towers. The green ones, I believe  
16 they were leftover T-Mobiles from the previous analysis. And  
17 again, it's got the date and time. This is Sprint No.  
18 347-883-8414, on 12/12/2011, from 10:38 through 10:57. However  
19 many calls were made or received, the phone was on the same,  
20 hitting on the same sector there.

21 Q. Now, the tower that's indicated in this map is located  
22 where, approximately?

23 A. I'm sorry. Could you repeat the question?

24 Q. The tower that's the relevant tower in this particular map  
25 that the 8414 number is hitting off at this time --

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1 A. Yes.

2 Q. -- 10:38 through 10:57 --

3 A. Yes, ma'am.

4 Q. -- where is that tower located on the map? Just the street  
5 location, the approximate street location.

6 A. Kind of blurry, I think. It looks -- is it Fourth Avenue  
7 there?

8 Q. I can give you the paper copy if it's easier.

9 A. Okay. It appears from the map that the tower address  
10 location is at the intersection of South Fourth Avenue and East  
11 Fourth Street on the northwest section of that intersection  
12 there. And you can see underneath where those two wings meet,  
13 there's a little icon. That's the precise location of the  
14 Sprint tower.

15 Q. The wings you just mentioned coming out from the tower,  
16 what do those represent?

17 A. Well, that represents a, an antenna or the direction the  
18 antenna is facing on that particular call, and that's from the  
19 call detail records in reference to the cell site index that  
20 the phone company provides.

21 Q. So during your direct testimony, we looked at a section of  
22 cell site records that included information like azimuth. Do  
23 you remember looking at that column in the cell detail records?

24 A. Yes, I do.

25 Q. A-Z-I-M-U-T-H?

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1 A. Yes, ma'am.

2 Q. And what does azimuth mean?

3 A. That's a nomenclature for a direction on a compass, and  
4 they use that as a reference to maintain and orient their  
5 antennas. So if you're looking at a compass rose that's 360  
6 degrees and this particular antenna, the center of it, where  
7 the two wings come together, it's not quite due north. It's  
8 probably a little, I'd say 350, 355, the center coming out. So  
9 if you're setting up an antenna, you have to have some point of  
10 reference, and they mark it down and they put that in their  
11 tower list.

12 Q. Did you use the data relating to the azimuth to help you  
13 designate which way the wings coming off the tower should be  
14 pointed?

15 A. Yes.

16 Q. Now, if you could, you can use the laser pointer, if you'd  
17 like, but can you indicate the coverage area that you would  
18 expect from that tower and that particular sector, given what  
19 you know about how Sprint's cell towers operate?

20 A. Well, we're looking at a tower that's located right here,  
21 and this tower has three sides to it. These wings are showing,  
22 they're coming off the center. This would be the azimuth or  
23 the orientation for this tower that's documented in the Sprint  
24 cell tower listing. And the reason it's wide open like that is  
25 because each sector is approximately 120 degrees. So that's

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1 120, 60 and 60. And three times 120 would be 360, which would,  
2 each tower's got like a circular coverage path service area  
3 that it's responsible for, and they break it up into three  
4 sides because directional antennas are much more efficient than  
5 a polarizing or unilateral pole, monopole, that's transmitting  
6 in all directions because they want to be very precise. They  
7 want to target a very precise geographical area because they  
8 have to reuse the frequencies that they're allocated, and they  
9 can't have interference or noise.

10 Q. Agent Magnuson, indicating with the laser pointer, can you  
11 show the jury what is the coverage area for that particular  
12 sector of that cell tower?

13 A. That would be something going out and then if you drew a  
14 line, perhaps a pie shape would be, based upon my experience,  
15 an estimated coverage area for that particular sector.

16 Q. Now, I believe up at the -- I can't read it. Maybe it's  
17 the Bronx River Parkway. There's some road up at the top  
18 portion of the map and there's a cell tower there. There, yes,  
19 the red triangle.

20 Is that another Sprint cell tower?

21 A. Yes, it is.

22 Q. Now, when Sprint or any other service provider sets up  
23 towers like this in conjunction with one another, what are they  
24 trying to do in terms of coverage area?

25 A. They're trying to provide every geographical area with

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1 coverage of RF energy so that you can make a phone and have  
2 seamless calls and they overlap a little bit so that it's not  
3 cut and dried; you don't walk out of one energy field and into  
4 another energy field. There's calculations going on and it's a  
5 very smooth, calculated, predetermined handoff to the next  
6 sector so that it's very seamless to the user. You don't hear.  
7 It's transparent.

8 Q. If somebody was using the phone approximately halfway  
9 between both of these towers, how would the network decide or  
10 how would the phone decide which cell tower to utilize?

11 A. Well, when the phone's not, it's in idle mode, it's on,  
12 it's monitoring the network, it's in control. It's got a list  
13 of six cells that it can select from, from one to six. It  
14 prioritizes them on quality, signal quality and strength, and  
15 the cell phone knows which ones it's going to seek out and talk  
16 to and send a signal for resources to the network. So when you  
17 hit the send button, it goes right to that tower, whatever it  
18 is. Whatever's on No. 1 on the phone.

19 Q. What determines what's No. 1 in terms of the phone  
20 priority?

21 A. Signal strength and signal quality, and it's an algorithm  
22 that is calculated for both because sometimes the strongest  
23 signal is not always the cleanest. You could have a strong,  
24 noisy signal, but you could have one that's almost as strong  
25 but much cleaner, and the phone would either select that, or,

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Magnuson - direct

1 if you're in a call, the network will tell you to move to that  
2 handoff.

3 Q. So, if there are two towers such as we see on this map, and  
4 you've already described that they would have an overlapping  
5 coverage area, is that fair to say?

6 A. Yes. Most geographical areas have overlap.

7 Q. If the phone is in that overlap position, would it be  
8 possible for it to hit either tower?

9 A. Yes.

10 Q. And it would make that determination based on the factors  
11 you just mentioned?

12 A. Yes. It would constantly speak between the network  
13 computer and the handset and it would constantly be determining  
14 what is the best frequency, cleanest, strongest traffic channel  
15 available for this handset and customer and they're going to be  
16 transferring, or handing off, that phone or those frequencies  
17 for the phone to use, if necessary.

18 Q. Now, you examined numerous call detail records and cell  
19 site records in connection with your preparation for this case,  
20 correct?

21 A. Yes, ma'am.

22 Q. And did some of those call detail records contain phone  
23 calls or other network communications by the phone that were  
24 very short in duration, say, 30 seconds or less?

25 A. Yes.

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1 Q. What, if anything, do you know based on your training and  
2 experience about what types of communications a short-duration  
3 communication like that might be?

4 A. Well, there's a number of events which could be signified  
5 by seeing a short duration call on a call detail record. Your  
6 phone could be on, it could ring for five or six rings, and  
7 then you could send it to voice mail or it will automatically  
8 go to voice mail. And depending upon the service provider and  
9 how they populate their call detail records, it may very well  
10 populate cell site data even though the call went to voice  
11 mail, because the network attempted to locate it to the  
12 network. It rang your phone. It didn't answer, but the call  
13 terminated, so there's still a series of starting, beginning,  
14 and terminating events for that particular activity.

15 Q. Now, in the call detail records and cell site records that  
16 we looked at yesterday during your direct examination, there  
17 were two columns, one for the starting cell tower, at the  
18 beginning of a call, and then one for the ending cell tower at  
19 the end of a call. Do you remember that?

20 A. Yes, I do.

21 Q. Now, during a short-duration communication such as the one  
22 you just discussed, what are the possible explanations for why  
23 there might be one tower at the beginning of the communication  
24 and a different tower at the end of that communication?

25 A. Well, when the phone is in idle, when it's on, and you're



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1 not making a call, the phone is monitoring the network and it  
2 sees up to six cell sectors. So the phone knows at that point  
3 if it's going, when you hit send, it's going to go to No. 1 on  
4 its list. And it's called the neighbors lists and it's looking  
5 at all the neighboring sectors. Once that happens, the CDR is  
6 populated by the network computer. If and when a traffic  
7 channel is assigned for voice, for the voice call, which is  
8 considered a network resource, now the network is committing a  
9 frequency pair to this handset and it's got to qualify. So  
10 once it assigns it, it may hand off to another adjacent  
11 qualifying sector. And that may be the sector when the phone,  
12 when the call terminates, it would populate with that  
13 particular sector.

14 Q. Does it necessarily mean that the phone itself moved at  
15 all?

16 A. No. No. It's, it's like a cell in a cellular network is  
17 like the infield of a baseball field. Say the handset is on  
18 the pitcher's mound and it sees sectors from home plate, first  
19 base, second base, and third base. It sees four cell sectors.  
20 Well, that infield is the cell, and in this case it's made up  
21 of four sectors. So the handset's on home plate and it thinks  
22 it sees the sector off, the handset's on the pitcher's mound  
23 and it thinks it sees the sector off home plate or a little  
24 stronger, so when you hit send, it reaches out to it and the  
25 network computer populates that sector off home plate.

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1 Immediately thereafter, the network, who is now in control and  
2 much smarter, says I think I like the sector on third base for  
3 you. For whatever reason I determine, probably a better  
4 signal, I immediately transfer you to those signals on third  
5 base. The call terminates. It populates the sector from third  
6 base.

7 What happened? The phone was always in the area of the  
8 pitcher's mound. It's being serviced by the four cell sectors.  
9 That's a cell network. That's a cell within a cell network.

10 Q. Actually, expanding on your analogy a little bit, if there  
11 are then a series of cell towers in the outfield, beyond the  
12 bases, so there is a cell tower in right field, center field,  
13 and left field, the phone is still on the pitcher's mound,  
14 would the phone ever hit one of the towers in the outfield  
15 instead?

16 A. Negative. That's not, it's not designed to jump sectors  
17 and number of towers in sectors. It's --

18 Q. Why not?

19 A. Well, if you were doing a tile job in your bathroom and you  
20 had -- the number for cell networks and management and  
21 architecture is seven. They have a limited number of  
22 frequencies that they're assigned by the government. So they  
23 have to reuse these frequencies, and it's the same thing if you  
24 have seven colors and you're going to tile your bathroom with  
25 seven tiles. And you don't want two blue tiles next to each

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Magnuson - direct

1 other, so you come up with this pattern and you start to repeat  
2 this pattern and you never have a blue or a green tile next to  
3 each other, they do the same thing with their frequencies  
4 throughout the network. They repeat the architecture, the  
5 structure, because the frequencies of outside their cell, to  
6 them, to the phone, is noise. So it can't, it can't jump to  
7 that far blue tile, so to speak, because it's, there's too many  
8 other tiles in between that are considered noise and it's too  
9 far. It's compartmentalized. It's not designed to be that  
10 way. Each sector and tower has a specific geographic coverage  
11 responsibility, and they do that so they can precisely manage  
12 their subscribers throughout the network and their limited  
13 number of frequencies.

14 MS. LESTER: May I have a moment, your Honor.

15 THE COURT: Yes.

16 MS. LESTER: No further questions.

17 THE COURT: Cross-examination?

18 MS. FONTIER: Briefly, your Honor.

19 THE COURT: Yes.

20 CROSS-EXAMINATION

21 BY MS. FONTIER:

22 Q. Good morning, sir.

23 A. Good morning, ma'am.

24 Q. I don't play baseball, so I'm not going to be able to use  
25 this analogy. But when you've described a sector that any

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Magnuson - cross

1 particular towers has, that's the range of coverage, right?

2 Yes?

3 A. Well --

4 When you're talking about a range, could you rephrase? I'm  
5 sorry.

6 Q. All right. So when you say the cell tower's sector, what  
7 was between the arms on your exhibit --

8 A. Yes, ma'am.

9 Q. -- you're talking about the range of coverage, the area  
10 that is covered, correct?

11 A. I'm talking about -- yes. Correct. Both the range and the  
12 orientation, because the handset has to see that antenna.

13 Q. It doesn't physically have to see it; it has to be within  
14 the radio range, the signal range, right?

15 A. Exactly, yes.

16 Q. And that range can extend for different distances, correct?

17 A. Yes.

18 Q. And that's dependent upon interference, weather, things of  
19 that nature, correct?

20 A. It is, but it has an end. It has a border, that range.  
21 Otherwise, it would be interfering with the whole network  
22 operation.

23 Q. And that range can extend up to two miles, correct?

24 A. Depending on the environment, I would say yes.

25 Q. I'm not sure what you specifically called it, but you were

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Magnuson - cross

1 saying the phone has a priority list of six sectors. Correct?

2 A. Yes.

3 Q. What did you call that?

4 A. It's called a neighbors list.

5 Q. So in that neighbors list, a phone is picking up six  
6 different towers, right?

7 A. Yes.

8 Q. And it's --

9 A. No. Six sectors.

10 Q. Okay. Six different sectors. And it sorts through those  
11 for the strongest signal, correct?

12 A. Correct.

13 Q. And so it has to be able to be within the range of six of  
14 those different sectors, right?

15 A. Yes.

16 Q. But you don't know which one it's in the range of  
17 specifically or which one it's closest to? Sorry.

18 A. Whatever is No. 1, and that's the one it's going to reach  
19 out for instantly when you hit send, and that's what the  
20 network computer populates.

21 Q. But there's a difference between signal strength and  
22 physical distance, right?

23 A. Could you rephrase that?

24 Q. When you say signal strength, it picks up the signal  
25 strength that is strongest, right?

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Magnuson - cross

1 A. Yes.

2 Q. That is not necessarily going to be the closest distance,  
3 correct?

4 A. Could you rephrase that, because there's also signal  
5 quality and signal strength.

6 Q. All right. The No. 1 priority in the neighbors list is  
7 signal strength. When the phone picks up that call, so it  
8 starts a call on a particular tower, No. 1, that's not  
9 necessarily the closest in physical distance to the actual cell  
10 phone, correct?

11 A. That is correct.

12 Q. And when a phone is stationary, it can go from one tower to  
13 the next, correct? During the course of a single call, without  
14 the phone moving, it can use more than one tower, right?

15 A. You would see populated two sectors: The beginning of the  
16 call which the phone selected the sector; and if the network  
17 decided to move it, for whatever reason, then you would see  
18 that sector populated in the call detail record.

19 Q. We might be saying the same thing and using different  
20 language.

21 A. Yes, ma'am.

22 Q. If I'm standing right here on my phone, my phone will pick  
23 up a single tower, and it is possible for it to switch during  
24 the course of my call to a different phone, correct, or a  
25 different tower? Yes?

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Magnuson - cross

1 A. Yes.

2 Q. And that's because both are, it's within the range of both  
3 of those?

4 A. Yes.

5 Q. And now the reverse is also true, correct? You can be on a  
6 call, on a single tower, and physically move, correct?

7 A. And?

8 Q. And stay on that tower, during the course of a call.

9 A. Yes, you can stay -- you can stay within that sector, that  
10 the -- yes.

11 Q. Within that two-mile range?

12 A. I don't, I wouldn't caveat that with any kind of range.

13 Q. But looking at the cell tower does not tell you where  
14 within the range the phone is located, correct?

15 A. No. Incorrect.

16 Q. It tells you the exact location?

17 A. No.

18 Q. It just tells you that it's within range of that tower,  
19 correct?

20 A. It tells you it's within a general area in an orientation  
21 off a specific geographical location of the tower, and by  
22 looking at the distance of the surrounding towers, you can get  
23 a good estimate of the service coverage of that sector, and  
24 it's general in nature, but the handset had to be in that  
25 sector in order for it to populate the information in the call

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Magnuson - cross

1 detail record.

2 Q. But if you look at the call detail record, it's not like a  
3 GPS, correct, a global positioning system? It doesn't tell you  
4 an exact latitude and longitude of the actual phone, correct?

5 A. Correct.

6 Q. So looking at just the cell tower use, all you know is that  
7 it's within the range of that cell tower, it's able to pick up  
8 the signal, correct?

9 A. Correct.

10 Q. And if it moves, within a single call, if the call detail  
11 records indicate as starting on one number and ending on a  
12 different number, say, in eight seconds, you don't know if the  
13 phone actually moved or if it was just because of signal  
14 strength, correct?

15 A. I would have to look at the actual location of the sectors  
16 and then that would suggest to me, okay, these are two adjacent  
17 sectors on the neighbors list, so, yeah, he's in the overlap  
18 area.

19 Q. But the records themselves, the detail records themselves  
20 don't tell you whether the phone is stationary or whether the  
21 phone is moving, right?

22 A. No. Sometimes they do tell that it's moving.

23 Q. Let me put up --

24 MS. FONTIER: Sorry. One moment, please.

25 Q. So, I'm going to show you a page from what is marked as



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Magnuson - cross

1 Defense Exhibit D, and let's take, for instance, page two of  
2 that exhibit. Can you see that, sir?

3 A. Yes.

4 THE COURT: Is it on your screen as well?

5 THE WITNESS: Yes, it is. Thank you, your Honor.

6 BY MS. FONTIER:

7 Q. I think you have a pointer, so I can show you what I'm  
8 talking about. What this is is an excerpt of the call detail  
9 record, right? Is that what it appears to be to you?

10 A. Appears to be, yes.

11 Q. So when you're looking at, let's look at No. 267, the call  
12 date. This was an eight-second-duration call, right?

13 A. Right.

14 Q. So what's in these records? Explain to me what this is,  
15 LAC, so I don't use the wrong language.

16 A. Well, this is a, several of the columns of what I recall as  
17 having a much, many more columns of information, call detail  
18 records for, what's it, T-Mobile, 704-345?

19 Q. Sorry. If I may rephrase, what does the first LAC mean?

20 A. That's the first location area code.

21 Q. That's the group of cell towers, right?

22 A. Yes, ma'am.

23 Q. And then the first cell ID, this is the specific tower  
24 within this group, right?

25 A. Right.

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Magnuson - cross

1 Q. And the second LAC is what?

2 A. Second location area code or group of towers.

3 Q. Is that where the call ends?

4 A. Yes.

5 Q. And then this second cell ID is the specific tower, right?

6 A. Yes.

7 Q. And this is the information contained in the call detail  
8 records about the phone's location, correct?

9 A. Correct.

10 Q. And then the duration of this eight-second call, it  
11 switches from one tower to the next, correct?

12 A. You're looking at the 267?

13 Q. 267. Yes.

14 A. Yes.

15 Q. Here and here. And so if I'm looking at these records,  
16 this information, you can't tell where in relation to either  
17 one of these cell towers the actual physical phone was, right?

18 A. Yes, I can.

19 Q. From looking at this record, you can tell where the  
20 physical phone was, the actual location, like as if it were a  
21 GPS?

22 A. Not the specific location of the handset. A general  
23 location, yes.

24 Q. The general area. You can tell the area that it was in,  
25 right?

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1 A. Yes.

2 Q. And but you don't know, just the fact that these two, it  
3 went from one tower to another doesn't tell you if the phone  
4 moved, right?

5 A. Not without analyzing the location and the orientation of  
6 the sectors because they could be adjoining, looking at each  
7 other, and you could be right in the middle. So it's, the  
8 movement is --

9 Q. Is it true you could be in the middle or you could be next  
10 to this tower or you could be next to this tower? All of those  
11 things are true, right?

12 A. Yeah. I could be in a car traveling 50 miles an hour and  
13 have an eight-second call and moved from one sector to the  
14 other, so, all of the above.

15 Q. Yes. All of the above are possible, right?

16 THE COURT: Yes? You said yes? All of the above are  
17 possible?

18 THE WITNESS: Yes, sir.

19 THE COURT: Okay.

20 BY MS. FONTIER:

21 Q. From looking at these records, you can't tell whether the  
22 phone was in a particular place or whether it's stationary or  
23 mobile, correct?

24 A. Well, I can go, I'd like to go back and suggest that you  
25 need to look at where the towers are and where the sectors are

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Magnuson - cross

1 and then you could make an educated guess as if there was  
2 movement or not movement or whether or not there was or wasn't.

3 Q. But it would be an educated guess; you can't specifically  
4 say that, right?

5 A. No. Because we have the data right here. This tells us  
6 where the hand set was in a general geographic area when it  
7 started a call and when it ended a call. Right.

8 Q. And we have the general geographic area, correct?

9 A. We have two general geographic areas. Unless we look at  
10 them on maps, we can't really understand what we're trying to  
11 say, so I'm reluctant to say it was in a car and it was moving  
12 or walking. Yes, ma'am.

13 MS. FONTIER: No further questions.

14 THE COURT: Thanks. Mr. Roth.

15 MR. ROTH: Just briefly.

16 THE COURT: Yes.

17 CROSS-EXAMINATION

18 BY MR. ROTH:

19 Q. Good morning, Mr. Magnuson.

20 A. Good morning, sir. How are you?

21 Q. Okay. Thanks.

22 Getting back to the general geographic area you drew,  
23 with the pointer you indicated general coverage area on  
24 Government Exhibit 3008. Do you remember doing that?

25 A. I do. Yes, sir.

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Magnuson - cross

1 Q. And just so that we're clear about how general that  
2 depiction is that you made with the pointer, are you familiar  
3 with the area that's depicted in Government Exhibit 3008?

4 A. Yes. Only on maps though.

5 Q. I meant have you physically been to that area?

6 A. No.

7 Q. Do you even know the scale on that map?

8 A. There are various scales on the maps. Some from a few  
9 hundred yards to some, I think, maximum probably two miles.

10 Q. I'm talking about the actual scale of the map itself. The  
11 map that --

12 A. That particular map, I can't recall a scale and I did not  
13 put a scale on the map.

14 Q. Is it fair to say, sir, when you were talking and you told  
15 my cocounsel that generally the coverage area could be within  
16 two miles within one of the sectors, one of the azimuths,  
17 120-degree sectors radiating from the cell tower itself. Is  
18 that correct?

19 A. I said I agree I said it could be up to two miles, but you  
20 have to take in the environment that you're in.

21 Q. Of course. Of course. And, but this environment you  
22 didn't take into consideration exactly, right?

23 A. Yes, I did.

24 Q. Let me ask you this, sir. Have you actually seen from  
25 Sprint, the carrier that you're talking about, the predictive

D3eWdor3

Magnuson - cross

1 coverage maps for this cell tower?

2 A. No. They don't provide their propagation RF maps. It's  
3 very proprietary and they're very secretive about that.

4 Q. Let's just break that down. What does that mean? It  
5 means -- you work for the FBI, is that right?

6 A. Yes, sir.

7 Q. And you want information from a private profit  
8 organization, corporation, right?

9 A. True. Yes, sir.

10 Q. And you're telling me that the FBI can't get the  
11 propagation or predictive maps of the coverage area of that  
12 particular cell tower from Sprint?

13 A. I'm sure we can get it.

14 Q. But you made no effort to get it in this case, is that  
15 right?

16 A. I made no effort to get it in this 2012 case. So trying to  
17 get them would be very difficult to get the status of their  
18 network at the time because they don't archive it. They'll  
19 have a current status of it.

20 Q. Right. But obviously the agents who were working on this  
21 case before, they could have gotten it and they could have  
22 subpoenaed it if they wanted to, is that right?

23 A. I suppose that is accurate. Is there a question?

24 Q. Yes. They had the ability -- you work for the FBI, is that  
25 right?

D3eWdor3

Magnuson - cross

1 A. Yes, sir.

2 Q. Okay. You know Federal law enforcement have agency law  
3 departments, and they could have subpoenaed the documents from  
4 Sprint, the predictive coverage maps or propagation maps for  
5 this cell tower from Sprint, is that correct?

6 A. Yes.

7 Q. And, to your knowledge, they didn't do it and you didn't do  
8 it, is that right?

9 A. That's right. Yes, sir.

10 Q. And, finally, sir, to generate those maps and to actually  
11 determine what the coverage area is on a given cell tower, the  
12 way that they, Sprint, the carrier, gets that secret  
13 propagation predictive map is by, one way of them doing it, the  
14 most accurate way is by their RF engineers going around with  
15 antennas and driving through the areas in respect of the cell  
16 tower, is that correct?

17 A. That is one way, yes.

18 Q. That's the best and the optimal way, is that correct?

19 A. Yes.

20 MR. ROTH: I have no further questions.

21 THE COURT: Thanks. Any redirect?

22 MS. LESTER: Just briefly, your Honor.

23 Ms. Brady, pull up Government Exhibit 3006, page four.  
24 Is it possible to zoom in a little bit on the map itself?

25 REDIRECT EXAMINATION

D3eWdor3

Magnuson - redirect

1 BY MS. LESTER:

2 Q. Now, Special Agent Magnuson, this is another one of the  
3 maps that you created, correct?

4 A. Yes. It appears to be, yes.

5 (Continued on next page)



D3E5dor4

Magnuson - direct

1 BY MS. LESTER:

2 Q. And this has a tower that looks to be at the intersection,  
3 approximately, of Allerton Avenue and Radcliffe avenue,  
4 correct?

5 A. Yes. There is two dark lines there demonstrating a sector  
6 off the tower that's located there.

7 Q. And the other red triangle, as we have already discussed,  
8 are other cell towers for that same network?

9 A. Yes.

10 Q. Now, how did you determine how far out to draw those two  
11 wings, as you referred to them previously?

12 A. Well, through our training and experience and interacting  
13 with the telecommunications vendors and various providers,  
14 their estimates and the way they determine it and the way we  
15 determine it is we go out from the tower that you're looking  
16 at, you go out about 70 percent to the nearest tower which is  
17 right there, and then you would draw an arc and close that and  
18 that would be your estimated coverage sector because there is  
19 going to be some overlap from the sector that is coming off  
20 this tower and that would come out, perhaps, 70 percent, and  
21 there is a precise footprint for each sector on every side of  
22 every tower and there is overlap from each one. So, the  
23 location of the surrounding towers helps us determine how far  
24 to estimate the coverage of each sector.

25 Q. Now, you were asked some questions on cross-examination

D3E5dor4

Magnuson - direct

1 about a coverage range of up to two miles. Do you remember  
2 those questions?

3 A. I do.

4 Q. In an urban area such as that depicted on this map, which  
5 is in the Bronx, correct --

6 A. Correct.

7 Q. -- do these towers have a range of two miles?

8 A. No. These towers have a range somewhat less than two  
9 miles.

10 Q. How do you know that?

11 A. Well, I have measured distances from tower to tower and I  
12 think the estimate, by looking at this map, even though there  
13 is no scale there, that there is a population of towers every  
14 half mile, every mile or so, and they're carving up this whole  
15 environment of buildings or other edifices or railroad tracks  
16 or highways, covering the highways and such so that, again,  
17 they take advantage of the infrastructure that is there and  
18 they can just -- there is no radio electricity and structures  
19 to mount antennas on and they don't need to put up a tower,  
20 they can carve up and add more cell sectors.

21 Q. Looking at this map, Agent Magnuson, can you count how many  
22 blocks are between the tower at Allerton Avenue and Radcliffe  
23 Avenue and the next tower over to the left?

24 A. It's about eight blocks, by my count.

25 Q. And those towers would have overlapping coverage areas

D3E5dor4

Magnuson - direct

1 within that eight block radius?

2 A. Exactly. So, the coverage area for each sector which you  
3 probably face each other right along that avenue, there is  
4 probably four blocks with an overlap area in the middle and  
5 that's where the calculations would be made whether to hand off  
6 to the next sector or the best sector.

7 MS. LESTER: No further questions.

8 THE COURT: Any recross?

9 RECROSS EXAMINATION

10 BY MS. FONTIER:

11 Q. This range, the wings we're looking at, you said it was  
12 your estimation, correct?

13 A. Yes, ma'am.

14 MS. FONTIER: No further questions, your Honor.

15 MR. ROTH: I'm just going to follow up on the wings.

16 THE COURT: Go ahead.

17 RECROSS EXAMINATION

18 BY MR. ROTH:

19 Q. As I understood you, sir, you indicated that the wing on  
20 the -- or the one that is coming down there would be 70  
21 percent, I think you said, from the nearest tower, that's why  
22 you drew the first, the top wing that distance; is that  
23 correct?

24 A. Correct.

25 Q. So, which -- help me out here.

D3E5dor4

Magnuson - recross

1 A. Sure.

2 Q. This seems to be -- which tower are you referring to on the  
3 wing that's coming down there, that's 70 percent to which  
4 tower? Which is the tower you used as a mark?

5 A. I didn't. I tried to maintain consistency with the nearest  
6 tower which was 70 percent and I drew the alternating wing the  
7 same.

8 Q. So that wing, which is, would go all the way down almost  
9 past the highway there, is that right?

10 A. We don't know.

11 Q. We don't know because it is imprecise, is that correct?

12 A. No. We do know that if I drew a line basically creating a  
13 pie shape connecting these two wings, that that would be a good  
14 estimate of the coverage of that sector. That's what we know.

15 Q. And if a representative from Sprint sat in the same chair  
16 as you in this trial and said it was two mile coverage area, he  
17 would be wrong? Up to a two mile coverage area?

18 A. He wouldn't be wrong because he is believing that cell  
19 sectors, they can cover up to two miles.

20 Q. Not just cell sectors, his cell sectors in Sprint in this  
21 area. They can? You've conceded that, is that right?

22 A. I didn't concede that. No, sir. I did not.

23 Q. So, there is no way that your testimony is that there is no  
24 way that this tower could cover a two mile area?

25 A. I don't think so. There is too many towers nearby and the

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Magnuson - recross

1 sectors -- there is a major highway there, there is a lot of  
2 activity going on, so you have to take into account a lot of  
3 factors.

4 Q. But you can't even take -- from the map you can't even take  
5 all those factors into consideration, right?

6 A. Not now, but we could.

7 Q. I understand if it was done properly and you had the  
8 propagation maps and you had the prediction maps and you took  
9 an RF antenna, you could sit up here and give a relatively  
10 precise answer as to the coverage area. Is that fair to say?

11 A. Sir, this is a relatively precise estimate. I do take  
12 antennas and measure cell networks and actual RF footprints and  
13 this is a very good approximation of the coverage of that  
14 sector.

15 Q. You didn't do that in this case for this particular  
16 geographical area taking into consideration the highways and  
17 the trains and the weather and everything else and the  
18 geography, is that correct?

19 A. That's correct.

20 MR. ROTH: I have no further questions.

21 THE COURT: Any re-redirect?

22 MS. LESTER: No, your Honor.

23 THE COURT: Okay. Agent Magnuson, you may step down  
24 again. Thank you.

25 (Witness steps down)

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1 THE COURT: Does the government have any other  
2 witnesses that they wish to call in their rebuttal case?

3 MS. LESTER: No, your Honor.

4 THE COURT: So the government rests.

5 Well, ladies and gentlemen that concludes the evidence  
6 portion of our trial. Now you are going to go to work or go  
7 home and play hooky. We don't sit on Fridays except when the  
8 jury is deliberating, I expect they sit through to Friday.

9 So, what happens on Monday is at 9:30 you are going to  
10 come as always. We will have the closing arguments of the  
11 lawyers, the summations. After that I will instruct you on the  
12 law and then you will begin to deliberate.

13 So, until then I don't want you thinking about the  
14 case, I don't want you pre-judging the case. I want you to  
15 keep an open mind. I don't want you discussing the case, of  
16 course. I want you to have a nice weekend and get some work  
17 done or whatever else you want to do between now and Monday,  
18 but Monday, be ready to go because the case will then become  
19 yours in short order. All right?

20 So, with that, I will bid you adieu. We are going to  
21 do work on our end so we can be ready to go on Monday. So, we  
22 have plenty to do but you should just be coming back on Monday  
23 to do your next piece. Okay? Great.

24 MS. FONTIER: Your Honor?

25 THE COURT: 9:30 Monday.

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(Continued on next page)

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(Jury not present)

THE COURT: Have a seat. We are going to bring Ms. Schuster in so we can have a chat with her briefly.

Then we can have argument on Rule 29 motions and charge conference which I don't think will take too long.

(Juror Schuster present)

THE COURT: You can take your usual seat or sit anywhere you want, Ms. Schuster.

A JUROR: I get to pick? Wow. I'm going sit in the front row.

THE COURT: I understand from Mr. Halegua you have more information with respect to your mother.

A JUROR: They have scheduled her surgery for next Thursday, the 21st.

THE COURT: It is in Las Vegas?

A JUROR: It is in Las Vegas.

THE COURT: What does that mean for you?

A JUROR: I have to fly out on Wednesday.

THE COURT: Do you have a flight yet?

A JUROR: No. I don't yet, no. I wanted to speak with you first.

THE COURT: I expect that we are going to have summations, that that will take us through the morning, I think probably maybe into early afternoon.

A JUROR: On Monday.



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1 THE COURT: On Monday. And then my instructions will  
2 take us probably through to the mid or late afternoon so the  
3 jury wouldn't start deliberating until probably late in the  
4 afternoon, relatively late in the afternoon on Monday. So,  
5 that would mean Tuesday you would be able to deliberate but  
6 depending on what your flight was on Wednesday, that would cut  
7 into your ability to deliberate.

8 A JUROR: Yes, sir. I mean, I'm going to -- again, as  
9 I said, I didn't really even take the time. It was very late  
10 before I got the information last night as they're three hours  
11 earlier than we are so I felt it was a moot point for me to  
12 start looking for flights last night. I needed to come in and  
13 speak with you first. So, obviously that will be something I  
14 will do this afternoon.

15 I'm going to guess just based on experience it could  
16 be anywhere from -- you know I depart 3:00 p.m. to 7:00 p.m.,  
17 somewhere in there.

18 THE COURT: Right. Okay.

19 A JUROR: Which would mean I have to be at the airport  
20 two hours prior to that or an hour and a half prior to that.

21 THE COURT: Why don't you look into flights, nail down  
22 flights for yourself and give a call to chambers and let us  
23 know what the range of flights is.

24 A JUROR: I can do that.

25 THE COURT: In the meantime I will chat with the

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1 lawyers about what that means for whether you should continue  
2 or whether we should start without. Once we start  
3 deliberations it is difficult to sort of have somebody leave.

4 A JUROR: Gotcha.

5 THE COURT: So, we will kick that around but I think  
6 why don't you plan on being here Monday anyway.

7 A JUROR: Will do.

8 THE COURT: But let us know what your flight is or the  
9 options of flights are.

10 A JUROR: Right. I will call this afternoon.

11 THE COURT: Thank you very much. I appreciate it.

12 A JUROR: Thank you.

13 THE COURT: All rise for Ms. Schuster.

14 (Juror not present)

15 THE COURT: Okay. Have a seat.

16 Ms. Fontier, you were saying something?

17 MS. FONTIER: Just a question. The stipulation that I  
18 read into evidence, did you want it marked as a defendant's  
19 exhibit?

20 THE COURT: I generally do that.

21 MS. FONTIER: Okay.

22 THE COURT: So.

23 MS. FONTIER: Then for the record it is marked as  
24 Defendant's Exhibit G.

25 THE COURT: G. Okay. So Defendant's Exhibit G is the

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1 final stipulation of the defense.

2 MS. FONTIER: And that's the stipulation regarding the  
3 DNA and the fingerprints.

4 THE COURT: Yes. Okay. Defendant's Exhibit G.  
5 That's fine.

6 (Defendant's Exhibit G received in evidence)

7 THE COURT: How do you want do this? We have Rule 29  
8 and charge that we need to discuss and we can talk about  
9 Ms. Schuster as well.

10 Do you want to jump in on that now? Take a couple of  
11 minutes?

12 MS. FONTIER: I don't know about Mr. Roth but my Rule  
13 29 is quite quick.

14 THE COURT: Okay. Let's do Rule 29 now and then we  
15 can talk about how quick the charge conference will be.

16 So, Rule 29. We have multiple counts obviously, so go  
17 ahead.

18 MS. FONTIER: Your Honor, I would move for an order of  
19 dismissal as to all counts against Mr. Dore for the general  
20 reason that the government has not provided sufficient evidence  
21 of any of the elements with particularity, however, to the  
22 identification of Mr. Dore as the perpetrator of these  
23 offenses.

24 THE COURT: Mr. Roth?

25 MR. ROTH: Judge, similarly, I would move for an order

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1 of dismissal in respect to Mr. Barrett that the government has  
2 not met their burden of proof at this juncture in respect to  
3 the crimes charged in the indictment.

4 THE COURT: Government, do you want to respond?

5 MS. MASELLA: Your Honor, I don't know how much detail  
6 you want but, among other things, the testimony of Patrick  
7 Taylor, the cooperating witness, placed both of these  
8 defendants within the conspiracy that is charged in Count One.  
9 He testified at length about the operation of the robbery  
10 conspiracy. He testified about numerous robberies including  
11 the substantive robberies in Counts Three and Five. Janiel  
12 Brown also placed both of the defendants squarely in the  
13 robbery conspiracy and provided ample proof of each and every  
14 element of the conspiracy count as well as the murder count  
15 against Mr. Dore.

16 In addition, we presented physical evidence  
17 corroborating the testimony of those two witnesses. For  
18 example, one of the victim's cell phones, Government Exhibit  
19 73, was taken from the victim in October; it was seized from  
20 the defendant Mr. Dore upon his arrest in January and it  
21 contained photographs of both the victim Abdul Cader, as well  
22 as the defendant Jermaine Dore.

23 Also, the cell site evidence of this case which we  
24 will be arguing in summation, I'm not sure how much of it was  
25 clear in the demonstrative exhibits, but places both

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1 defendants' phones, Dwayne Barrett's phone and Jermaine Dore's  
2 phone in very close proximity to at least seven or eight of the  
3 robbery locations at dates and times closely linked with the  
4 robberies.

5 THE COURT: I'm going to deny the motion with respect  
6 to the conspiracy. I think for the individual counts I will  
7 reserve just because I have to make sure I have got my head  
8 around what the different evidence is for each of the other  
9 substantive counts. Okay? So, I will reserve on that.

10 I sent, last night, my draft of the jury charge.  
11 There were only three areas in which the parties disagreed and  
12 I have resolved those; they related to an instruction on  
13 circumstantial evidence which I stuck with what I normally do  
14 as opposed to what was proposed by the defense to incorporate  
15 an instruction that Judge Batts has previously used; there then  
16 was a dispute with respect to an instruction on identification  
17 but I'm not going to include that because I think that  
18 instruction is really where there are identifications by people  
19 who, if the victims had made identifications I think that  
20 instruction might have been appropriate but we don't have  
21 identifications from the victims, instead we have  
22 identifications from people who clearly knew about the  
23 defendants. So, I think that instruction was really not well  
24 suited to the testimony of the witnesses that were in this case  
25 and I think the instructions that are already in the charge

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1 cover witness credibility with respect to the witnesses who did  
2 testify about identification. So, I deny the proposal by the  
3 defendants there.

4 The other dispute related to whether it was  
5 appropriate to give a Pinkerton instruction, so I thought it  
6 would be useful to have a little bit of discussion on that.

7 The case and the explanations cited by the defendants  
8 with respect to the Pinkerton instruction, they cited a RICO  
9 case and that Pinkerton doesn't apply to state substantives  
10 which would be the predicate for RICO, I really think that's  
11 apples and oranges so I want to have discussion about the  
12 counts that are in this indictment and whether a Pinkerton  
13 instruction is appropriate given the evidence that's come in  
14 and given the counts of the indictment that are here.

15 So, the government, you're arguing for a Pinkerton  
16 charge so -- and that's just for Counts Three, Four, Five, Six  
17 and Seven, correct?

18 MS. MASELLA: Correct, your Honor.

19 THE COURT: So why?

20 MS. MASELLA: Your Honor, we believe that Pinkerton  
21 instruction is appropriate because while there is very, very  
22 strong proof in our view of the conspiracy between these two  
23 and other individuals, with respect to the two substantive  
24 incidents and the related firearms charge, there are sort of  
25 alternative theories or potential alternative theories

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1 supported by the evidence as to who did what during the actual  
2 crimes.

3 So, taking for example the October 29th robbery which  
4 is the subject of Counts Three and Four, based on the victim  
5 testimony from the two brothers, remember, who were the victims  
6 of that incident, the brother who was inside the house  
7 testified that the two individuals who came inside the house  
8 both possessed firearms on that occasion.

9 Patrick Taylor's testimony -- remember he was in the  
10 car as a lookout down the street -- demonstrated that he had  
11 seen Jermaine Dore with a gun earlier that day. So, he can  
12 place a gun in the hand of the Defendant Dore on the same day  
13 in connection with the incident but then in terms of, you know,  
14 who went into the house and actually held the guns at the  
15 victim's who were restrained there, there are alternative  
16 theories.

17 So, on that incident we think that Pinkerton is  
18 appropriate because it is enough to show that the defendants  
19 were in a conspiracy and were participating in this incident  
20 with knowledge of a purpose and what was going on, that the  
21 acts undertaken inside the house during the course of a robbery  
22 including with the guns were foreseeable to all of the members  
23 of the conspiracy including Dwayne Barrett and Jermaine Dore,  
24 and that the jury can convict them on a Pinkerton theory  
25 because it is not -- based on the evidence we do believe there

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1 is evidence that Dwayne Barrett was in the house with a gun.  
2 That was the testimony that we heard from the victim who  
3 described the taller individual stooping down under the  
4 basement ceiling, and also from Patrick Taylor after the  
5 incident when the group gets back to the location where they're  
6 talking about the robbery, they're all sort of joking about the  
7 fact that Dwayne Barrett went into the house on that occasion  
8 and participated in the conducting of the robbery because that  
9 was somewhat unusual for him.

10 So, the evidence would support a theory of direct  
11 liability for both Dore and Barrett on that incident but there  
12 also is evidence to support the idea that Barrett was at the  
13 scene driving the car, that he knew about the presence of a  
14 gun, that he was part of the robbery, that he understood that  
15 an armed robbery was going to take place and he played a role  
16 but that he didn't necessarily himself possess a gun that day.

17 THE COURT: But you're talking about doing it for --

18 MS. MASELLA: That's Counts Three and Four.

19 THE COURT: Count Three, which is a substantive  
20 robbery and a firearm, the firearms that corresponds with it,  
21 right? And then Count Five which is another robbery.

22 MS. MASELLA: Right.

23 THE COURT: And the corresponding gun charge as well.  
24 Two corresponding gun charges, right?

25 MS. MASELLA: Yes, your Honor.



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1 I guess on further reflection we would be satisfied if  
2 it were just Counts Four and then Six and Seven that included  
3 the Pinkerton charge, in other words not the substantive  
4 robbery counts but each of the firearms counts and then the  
5 murder count.

6 THE COURT: So, let me hear from the defendants if you  
7 disagree. If you agree with that then just tell me.

8 MS. FONTIER: No, we disagree, your Honor.

9 THE COURT: Okay.

10 MS. FONTIER: Your Honor, I just don't think that the  
11 Pinkerton charge is necessary in this case and there are --  
12 there is aiding and abetting, the theories that are available  
13 to the government that are listed in the indictment.

14 THE COURT: Right.

15 MS. FONTIER: And that charge is already included.  
16 And I think with the general instructions on conspiracy and on  
17 the aiding and abetting of the substantive charges it covers  
18 any of the alleged actions here and the Pinkerton charge is  
19 unnecessary.

20 That's it. It is unnecessary.

21 MR. ROTH: I concur with that, Judge.

22 THE COURT: Look. I think as a general matter the  
23 government often overincludes Pinkerton charges but I think  
24 this is a case where, frankly, it actually does make some sense  
25 so I'm inclined to keep it. I want to think about it a little

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1 more and look at the case law to make sure I'm not missing  
2 something, but I do think I'm probably going to give a  
3 variation on the Pinkerton charge that is here which is I think  
4 straight from Sand.

5 And so, the government is just seeking it on the gun  
6 charges, correct?

7 MS. MASELLA: Correct, your Honor.

8 THE COURT: So let me know if that changes.

9 MS. MASELLA: Counts Four, Six and Seven.

10 MR. ROTH: So my understanding is the government is  
11 going to argue in the alternative basically, factually.

12 THE COURT: Yes; for those gun charges, that's right.

13 Now, those were the areas of disagreement with respect  
14 to the charges that were submitted prior to the trial. Just  
15 this morning I got a request to include a multiple conspiracies  
16 instruction from Ms. Fontier so the government has now seen it.

17 Does the government have a position on this? I'm  
18 inclined to include it frankly.

19 MS. MASELLA: Your Honor, we are opposing this.

20 We don't see any basis for a multiple conspiracy  
21 charge. In terms of the incidents that were proved up in this  
22 case, I think all but one actually included both defendants  
23 Dore and Barrett. Most of them also included Fahd Hussain and  
24 the information coming from him and the operating in a common  
25 course of dealing in the course of these robbery conspiracies.

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1 I don't see any way that there is any basis in the evidence for  
2 finding that a separate or different conspiracy existed.

3 THE COURT: Well, I mean, I think the argument would  
4 be that there was a different conspiracy sort of that was each  
5 robbery was a separate conspiracy, I suppose. I mean, there  
6 were certain people who were not present for some and were  
7 present for others who had no involvement in certain robberies  
8 and were very present for others.

9 So, I think all of that -- you can argue all of the  
10 things you just argued but I'm not sure the defense would be  
11 precluded from arguing that the conspiracy that has been  
12 alleged didn't exist. So, that's my inclination.

13 Mr. Roth?

14 MR. ROTH: In addition, Judge, there are some  
15 robberies where there is -- I haven't seen any connection to  
16 Hussain who is supposedly the hub of this conspiracy.

17 MS. MASELLA: No. There are several robberies to  
18 which we did not prove a connection to Hussain but each of the  
19 robberies that we did prove involved both of the charged  
20 defendants save one robbery which only had Dore and other  
21 members. So, even if there were other co-conspirators who were  
22 present sometimes and not at other times, the multiple  
23 conspiracy charge focused on the conspiracy that the defendants  
24 were part of and what they did because they were present at  
25 every robbery.

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1 THE COURT: Well, you're alleging they were present at  
2 every robbery but I don't think that's -- I mean, I don't think  
3 that's a given and I think that there is room to argue multiple  
4 conspiracy.

5 But, look, the government just got this, I assume,  
6 when I did which was early this morning. So, if you want to  
7 have an opportunity to consider it and propose either different  
8 language or cite some authority as to why it is not  
9 appropriate, I will give you a chance to do that.

10 MS. MASELLA: Thank you, your Honor.

11 THE COURT: This probably should have been included  
12 with the draft that was submitted before the trial but there  
13 are always things that happen during a trial that prompt  
14 changes. I'm surprised there frankly aren't even more.

15 I have taken out several of the instructions that are  
16 I think clearly not applicable so you should have seen what  
17 those were.

18 Are there any other objections to what is in the  
19 charge?

20 MS. FONTIER: May I just have one moment to fine line?

21 THE COURT: Yes.

22 MS. LESTER: Your Honor, there is in the final section  
23 of the charge under deliberations of the jury a section about  
24 seeing exhibits and I think the government would ask for an  
25 inclusion of maybe just a sentence about redactions in exhibits

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1 and that no inference should be drawn from the redactions.

2 THE COURT: The only redaction is from the one  
3 exhibit, right?

4 MS. LESTER: No, your Honor.

5 THE COURT: The two exhibits; the cooperation  
6 agreement is --

7 MS. LESTER: There is also redaction from the autopsy  
8 report.

9 THE COURT: Yes. That's right.

10 Anybody have a view on that? Defense?

11 MR. MURPHY: No. No objection.

12 MS. FONTIER: No objection, your Honor.

13 THE COURT: Okay. You propose to put in the right to  
14 see exhibits? That one, page 70?

15 MS. LESTER: Wherever the Court thinks it makes the  
16 most sense, but there the Court is talking about their ability  
17 to look at exhibits in the case.

18 THE COURT: Okay. Anything else from the defense?

19 MS. FONTIER: I just want to be sure that in the  
20 General Instructions, K, the testimony of cooperating  
21 witnesses --

22 THE COURT: K?

23 MS. FONTIER: -- on page 66 under the general  
24 instructions, K, testimony of cooperating witnesses.

25 THE COURT: Let me just get there. Hold on. Yes?

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1 MS. FONTIER: I just want to make sure that when the  
2 list goes in it includes the non-prosecution witnesses, that  
3 they are included in the list of cooperating witnesses and it  
4 is not simply Patrick Taylor but also Janiel Brown and -- did  
5 they put in non-pros for Abdulla?

6 MR. ROTH: They did.

7 THE COURT: I think it should be -- well, the  
8 accomplice witnesses are clearly Brown and Taylor, correct?  
9 The government is not disputing that.

10 MS. LESTER: No. Correct.

11 THE COURT: So it should say you have heard witnesses  
12 testify that they were involved -- I could even name them.

13 MR. ROTH: Yes.

14 MS. FONTIER: Yes.

15 THE COURT: So it is those two but Abdulla is not one  
16 of those.

17 MS. LESTER: But, your Honor, the instruction with  
18 respect to pleading guilty and sentencing doesn't apply to  
19 Ms. Brown so it's confusing to include her here.

20 THE COURT: Well, I guess that's the issue. Should I  
21 be adding an instruction that talks about a non-pros?

22 MS. FONTIER: I think so, your Honor. I make that  
23 request so that it is not confusing.

24 THE COURT: I mean, I could maybe combine it and make  
25 it testimony of cooperating witnesses and the witness who was

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1 offered a non-prosecution agreement or something.

2 MS. MASELLA: One suggestion. You can leave the first  
3 paragraph as is and make that related to Patrick Taylor.

4 THE COURT: Right.

5 MS. MASELLA: And then include a second paragraph:  
6 You heard a witness, Janiel Brown, that testified pursuant to a  
7 non-prosecution agreement, period. And then who also, you  
8 know, testified that she was involved in the planning and  
9 carrying out of certain of the crimes charged, and then the  
10 remainder of the instruction could apply to both of those.

11 THE COURT: Yes. I think that's what I'm going to do  
12 but there should be the differentiation so I agree with that.  
13 So, I will tweak that.

14 MS. FONTIER: Okay. Thank you, your Honor.

15 THE COURT: Anything else?

16 MS. MASELLA: With respect to the description of the  
17 charges, because we said --

18 THE COURT: What page?

19 MS. MASELLA: Beginning on page 17, there still are  
20 the names of defendants.

21 THE COURT: Yes.

22 MS. MASELLA: Who pleaded guilty after that.

23 THE COURT: We will take that out and think about I  
24 generally send the indictment back. So, do we want to redact  
25 out any names but those of the defendants? That is typically

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1 what I would do.

2 MS. MASELLA: We can prepare a redacted indictment  
3 that doesn't have missing portions.

4 THE COURT: Talk to defense counsel. If the way you  
5 redact is not the way they would redact we can talk about it.

6 MS. MASELLA: Yes, your Honor.

7 THE COURT: But my usual practice it is to send the  
8 indictment back so they can see it, okay?

9 Ms. Fontier?

10 MS. FONTIER: Does this include -- I'm asking because  
11 I am quickly reading it which is probably a bad practice, but  
12 when you send the indictment back does that include an  
13 instruction, the instruction at the beginning that it is not  
14 proof of anything?

15 THE COURT: That it is not evidence, right.

16 MS. FONTIER: Okay.

17 THE COURT: All right?

18 MS. FONTIER: Yes.

19 THE COURT: Anything else?

20 Mr. Roth?

21 MR. ROTH: Judge, I didn't weigh this on Ms. Schuster  
22 but I would consent if she feels constrained by travel.

23 THE COURT: She is going to leave Wednesday. There is  
24 no way she can deliberate past noon or 2:00 on Wednesday. My  
25 inclination is that's too constrained a time period.



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1 MS. FONTIER: Your Honor, obviously I agree with your  
2 inclination, but also I wanted to voice that it is my very,  
3 very strong preference if we are going to replace her at some  
4 point that it be prior to deliberations.

5 THE COURT: Oh yes.

6 MS. FONTIER: So we don't wade into that mess that  
7 occurs.

8 THE COURT: That's what we will talk about. I don't  
9 want to have a day and a half deliberations, have her leave and  
10 we have to bring in an alternate and tell everybody to start  
11 all over again. So, I would be inclined to excuse her before  
12 deliberations but I think I'll have her come and watch the  
13 summations, even though it is probably a foregone conclusion  
14 unless you think it is cruel and unusual. She is not looking  
15 to get out of here. She has obligations to her mother and that  
16 takes precedence. I get that.

17 MS. FONTIER: I have no doubt that she would like to  
18 hear the defense, but.

19 MR. ROTH: Maybe when she calls back about her flight  
20 plans if it is appropriate you could ask her, your clerk could  
21 ask her.

22 THE COURT: Yes. I don't want her obviously  
23 discussing with the other jurors what's going on. I don't want  
24 anybody getting ideas. Okay. Well, I will let you know when  
25 we hear from her and what we hear from her and if I have

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1 excused her before Monday I will tell you that too.

2 Anything else we should cover now?

3 MS. FONTIER: Your Honor, just of the exhibit that was  
4 admitted with the modifications, obviously.

5 THE COURT: Yes.

6 MS. FONTIER: I think what is probably the best  
7 solution is to just recreate the exact same map with the same  
8 scale.

9 THE COURT: A and B can stay where they are, just take  
10 out the line.

11 MS. FONTIER: I don't know how to do it on Google  
12 Maps. Is there any other way?

13 THE COURT: Don't put in driving directions. It is  
14 easily done.

15 MS. FONTIER: You just take out the line, put and A  
16 and B?

17 THE COURT: You can do it.

18 MS. FONTIER: Ms. Stafford says she knows how to do  
19 it.

20 THE COURT: You can do it.

21 MS. FONTIER: We will submit them to the government  
22 and make sure they're okay with them before, obviously.

23 THE COURT: I think that's fine.

24 For summations you told me your estimated lengths.  
25 What about are you planning to use PowerPoints, planning to use

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1 exhibits I assume? There is a lot of electronic exhibits which  
2 is fine. If are you going to use something that is not in  
3 evidence, I think you should clear it with your adversaries  
4 unless there is some need for surprise, in which case you  
5 should let me know. Okay?

6 MS. MASELLA: Thank you, your Honor.

7 THE COURT: But I think there is not much need for  
8 surprise on either side at this point. The evidence is all in.

9 MR. ROTH: We would like some surprise.

10 MS. FONTIER: Sometimes I surprise myself when I  
11 speak.

12 THE COURT: There is always unintended surprises so  
13 there will be some of those.

14 MR. ROTH: Judge, you had great credibility with this  
15 jury until you predicted spring was here -- it was snowing in  
16 Westchester this morning.

17 THE COURT: I'm not sure about my weather predictions.  
18 It is chilly but it is going to warm up again, though.

19 So, send me an exhibit list. If you can send me a  
20 revised exhibit list by tomorrow like at 3:00? Sooner would be  
21 better just because we need to make copies over the weekend.

22 MS. LESTER: We will, your Honor.

23 Did you say that the Court will provide a verdict  
24 form?

25 THE COURT: Yes.

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1 MS. LESTER: Okay.

2 THE COURT: It will be pretty bare bones but I will  
3 show it to you.

4 MS. FONTIER: You want a single exhibit list?

5 THE COURT: Yes. I think you should use the  
6 government's as the template because they have so many more  
7 exhibits, and then you can clean page break if you want to have  
8 defendants' exhibits. If you want them separate documents it  
9 wouldn't kill me but I want the exact same format so there is  
10 no distinction to be made between one or the other.

11 MS. FONTIER: We have managed to get along this far, I  
12 think we can coordinate an exhibit list.

13 THE COURT: It has been a model of professionalism and  
14 courtesy and that is not lost on me so thanks for that. Okay?

15 MS. FONTIER: Thank you, your Honor.

16 THE COURT: I will see you folks 9:15 or so on Monday.  
17 If we need to talk before then, let me know. If we need to  
18 talk even tomorrow, let me know, we can have a conference or  
19 something, okay?

20 Thanks a lot.

21 (Adjourned to 9:15 a.m. Monday, March 18, 2013.)  
22  
23  
24  
25

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